

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2422 Poplar Road)		
15 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
Kristian & Pamela Thompson	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2017-0060-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Kristian & Pamela Thompson, owners of the subject property (“Petitioners”). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R) as follows: (1) to permit a principal building having a side of building to property line setback of 40.1 ft. in lieu of the required 50 ft.; (2) to permit a principal building and accessory building to be situated 47.8 ft. & 31.4 ft., respectively, from the centerline of a road in lieu of the required 75 ft.; (3) to permit an existing lot having a size of 0.69 acres in lieu of the required 1.5 acres; and (4) to permit an accessory structure to be located in the front yard in a residential zone in lieu of the required rear yard only. A site plan was marked as Petitioners’ Exhibit 1.

The owners, assisted by professional engineer John Motsco, appeared in support of the petition. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS), the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). None of these agencies opposed the requests, and conditions will be included in the order below the address

the issues raised in the ZAC comments.

The property is approximately 0.69 acres in size and is zoned RC-5. The property is improved with a small single-family dwelling which has extensive water damage and is uninhabitable. Petitioners propose to raze the existing structure and in its place construct a new single-family dwelling. To comply with environmental and Critical Area regulations, the proposed dwelling would be situated closer to the road (and farther from the water) than the existing home. This in turn gave rise to several of the variance requests.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have met this test. The property is waterfront and the available building “envelope” is constrained by environmental features and regulations. As such the property is unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct the proposed dwelling. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED, this 17th day of October, **2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to permit a principal building having a side of building to property line setback of 40.1 ft. in lieu of the required 50 ft.; (2) to permit a

principal building and accessory building to be situated 47.8 ft. & 31.4 ft., respectively, from the centerline of a road in lieu of the required 75 ft.; (3) to permit an existing lot having a size of 0.69 acres in lieu of the required 1.5 acres; and (4) to permit an accessory structure to be located in the front yard in a residential zone in lieu of the required rear yard only, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Prior to issuance of permits Petitioners must comply with the Critical Area and flood protection regulations.
3. Prior to issuance of permits Petitioners must submit for approval by the DOP architectural elevations of the proposed dwelling.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln