

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(9234 Todd Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Barry J. & Eva Marie Koluch	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2017-0219-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Barry J. & Eva Marie Koluch, owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R) to permit a required average front yard setback of 30 ft. in lieu of the required 40 ft., for a replacement dwelling. A site plan was marked as Petitioners’ Exhibit 1.

Barry Koluch and Dave Billingsley 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 Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS). Neither agency opposed the requests.

The property is approximately 20,750 square feet in size and is zoned D.R. 5.5. The property is comprised of Lot 13 and half of Lot 12 as shown on the plat of Thomas Todd, Jr., recorded in 1911. Petitioners propose to construct a new single-family dwelling on the site, but require variance relief to do so.

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 waterfront lots are narrow and deep, and were created by a plat recorded long before adoption of the B.C.Z.R. 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 a new dwelling on the lots. 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 community and/or Baltimore County opposition.

THEREFORE, IT IS ORDERED, this **11th** day of **April, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit a required average front yard setback of 30 ft. in lieu of the required 40 ft. for a replacement dwelling, 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 critical area and flood protection regulations.

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