

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(3720 Chestnut Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Karen Sinisi Llufrio	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2017-0220-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the owner of the subject property (“Petitioner”). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R) to allow side yard setbacks of 10 ft. and 10 ft. in lieu of the required 50 ft. and 50 ft. and a height of 45 ft. in lieu of the maximum permitted 35 ft. for a new dwelling. A site plan was marked as Petitioner’s Exhibit 1.

Karen and Paul Llufrio, along with David Billingsley, appeared in support of the petition. Two neighbors attended the hearing and opposed the requests. 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 Planning (DOP), the Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS). None of the County review agencies opposed the requests.

The property is approximately 14,925 square feet in size and is zoned RC-5. The property is shown as Lot 95 on the Plat of Bowley’s Quarters, recorded in 1921. The waterfront lot is unimproved, and Petitioner proposes to construct a single-family dwelling on the property.

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).

Petitioner has met this test. The property is narrow and deep (50' x 305'), and was created by a plat recorded nearly 100 years ago, long before the adoption of the B.C.Z.R. As such it is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because she would be unable to construct a dwelling on the lot. 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.

Many 50 ft. wide lots in the Bowley's Quarters community are improved with dwellings, and I do not believe the proposed dwelling would have a detrimental impact upon or be incompatible with the community. While the neighbors do not object to a house being constructed on the lot, they believe the side yard setbacks proposed are inadequate, and they also take issue with the proposed height of the dwelling. As discussed at the hearing, while the property is zoned RC 5 (*de jure*) it is in reality (as revealed by the pattern of development in the community) a *de facto* DR 3.5 or DR 5.5 zone. Both of these residential zones permit 10 ft. side yard setbacks, which is what is requested in this case. I do however agree the 45 ft. proposed height would be excessive, and the Order will permit the proposed single-family dwelling to be no more than 40 ft. in height.

THEREFORE, IT IS ORDERED, this 4th day of **April, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to allow side yard setbacks of 10 ft. and

10 ft. in lieu of the required 50 ft. and 50 ft. and a height of 40 ft. in lieu of the maximum permitted 35 ft. for a new dwelling, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at her 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, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must prior to the issuance of permits comply with the critical area regulations.
3. Prior to the issuance of permits Petitioner must submit for approval by the DOP elevation drawings of the proposed single-family dwelling, to ensure compliance with the RC 5 performance standards.

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