

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(1701 Beechwood Avenue)		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7th Council District		
John F., Sr. & Anita A. Totty, et al.	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2017-0246-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by John F., Sr. & Anita A. Totty, et al., owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from §1A04.3.B.2.b, of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a proposed single family dwelling with front and side yard setbacks from the centerline of a street of 50 ft. each in lieu of the minimum required 75 ft. each. A site plan was marked as Petitioners’ Exhibit 1.

John F. Totty, Sr. and David 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 Department of Environmental Protection and Sustainability (DEPS), the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). None of the reviewing agencies opposed the requests.

The site is approximately 31,222 sq. ft. in size and zoned RC-5. The property is unimproved, and is comprised of Lot Nos. 154 & 155 as shown on the Plat of Evergreen Park (recorded in 1924). Petitioners propose to construct a single-family dwelling on the property but require variances 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 property is triangular in shape, which renders it unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct the proposed single-family dwelling. Finally, I find that the variances 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.

In its ZAC comment the DOP suggested a variance is also required for the side yard setback on the eastern property line. On the plan Petitioners show the setback at 60', which would satisfy the 50' required setback under the RC 5 regulations. It is true there is an internal lot line separating Lot Nos. 154 & 155, and the DOP correctly notes a variance is therefore required unless the "lot line is otherwise extinguished." Here, Petitioners are using Lot 155 in conjunction with Lot 154 to satisfy the zoning setback, and in that regard the lots are deemed merged. *Remes v. Montgomery Co.*, 387 Md. 52, 86 (2005) (recognizing merger occurs when "a common owner of property constructs a building on one lot which incorporates space from an adjacent lot in order to fulfill setback requirements"). As such a variance is not required.

THEREFORE, IT IS ORDERED, this 8<sup>th</sup> day of **May, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to §1A04.3.B.2.b, of the Baltimore County Zoning Regulations ("B.C.Z.R") to permit a proposed

single-family dwelling with front and side yard setbacks from the centerline of a street of 50 ft. each in lieu of the minimum required 75 ft. each, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Lot Nos 154 & 155 as shown on the Plat of Evergreen Park (recorded at Plat Book 7, page 174) have merged for zoning purposes.

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 its 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.
3. Prior to issuance of permits Petitioners must submit architectural elevations to the DOP to enable that agency to make the requisite finding under the RC-5 Performance Standards.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:slh