

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(1704 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. 2017-0248-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.A, 1A04.3.B.2.b, 400.1 and 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R”): (1) to permit a proposed replacement single family dwelling with side yard setbacks of 10 ft. and 24.75 ft., and a height of 40 ft. in lieu of the required 50 ft., 50 ft. and maximum allowed 35 ft., respectively; and (2) to permit a replacement detached accessory structure (garage) to be located in the front yard with a height of 20 ft. in lieu of the required rear yard and maximum allowed 15 ft. 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) and the Bureau of Development Plans Review (DPR). None of the reviewing agencies opposed the requests.

The site is approximately 11,470 sq. ft. in size and zoned RC-5. The waterfront property

is improved with a single-family dwelling constructed in 1924 and a detached garage in the front yard (i.e., street side). Petitioners propose to raze both of these structures and construct a new single-family dwelling and detached garage which will be positioned on the lot in roughly the same location as the buildings being razed. To do so variances are required.

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 lot is narrow and deep (approximately 62 ft. x 228 ft.), 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.

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): (1) to permit a proposed replacement single family dwelling with side yard setbacks of 10 ft. and 24.75 ft., and a height of 40 ft. in lieu of the required 50 ft., 50 ft. and maximum allowed 35 ft., respectively; and (2) to permit a replacement detached accessory structure (garage) to be located in the front yard with a height of 20 ft. in lieu of the required rear yard and maximum allowed 15 ft., 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.
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.
4. The detached garage shall not be used for commercial purposes and shall not contain living quarters and/or kitchen facilities.

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:sln