

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(8820 Chesapeake Avenue)		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7th Council District		
John & Marisa Olszewski	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2017-0250-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 Olszewski, Jr. & Marisa Olszewski, owners of the subject property (“Petitioners”). Petitioners seek variance relief pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R”) to allow a 15 ft. street side yard setback for a corner lot in lieu of the required 25 ft. A site plan was marked as Petitioners’ Exhibit 1.

Marisa Olszewski appeared in support of the petition. Timothy Kotroco, Esq., represented the Petitioners. 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).

The site is approximately 16,610 sq. ft. in size and zoned DR 5.5. The property is now unimproved, although a prior dwelling on the site was razed after being damaged in Hurricane Isabel. Petitioners propose to construct a new single-family dwelling on the property, in essentially the same location as the former dwelling. The dwelling (which would front on Chesapeake Avenue) would be located 15 ft. from Baylight Road, in lieu of the required 25 ft. Though the DR 5.5 zone requires only a 10 ft. side yard setback, the requirement here is 25 ft.

since it is a corner lot bordered by two public roads.

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 has an irregular shape and is bound on two sides by public roads. As such it 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 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.

Just prior to the hearing an e-mail was received from Trish Watson, who lives near the subject property. Ms. Watson wanted to obtain additional information regarding the variance, but did not oppose the request. Following the hearing, Petitioners wrote Ms. Watson and addressed the issues raised in her e-mail, and she wished Petitioners “all the best as you plan to build your new home.” Copies of these e-mails are included in the case file, and a copy of this Order will be sent to Ms. Watson.

THEREFORE, IT IS ORDERED, this 2<sup>nd</sup> day of **May, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R”) to allow a 15 ft. street side yard setback for a corner lot in lieu of the required 25 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 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.

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