

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1145 Seneca Road)		
15 th Election District	*	OF ADMINISTRATIVE
6th Council District		
Gary F. & Lori M. Caligiuri	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2017-0253-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Gary & Lori Caligiuri, owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from §§1A04.3.A and 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“B.C.Z.R) to permit a structure (dwelling) with a height of 40 ft. and to permit side yard setbacks of 10 ft. and 13 ft. in lieu of the required 35 ft., 50 ft., and 50 ft. for a replacement dwelling. A site plan was marked as Petitioners’ Exhibit 1.

Lori Caligiuri 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 21,692 sq. ft. in size and zoned RC-5. The property is improved with a small single-family dwelling constructed in 1929. Petitioners propose to raze that structure and construct in essentially the same footprint a new single-family dwelling. Due to the RC-5 zoning designation 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 property is narrow and deep (approximately 50' x 419') and is therefore unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct the proposed replacement 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 16th day of **May, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief of the Baltimore County Zoning Regulations ("B.C.Z.R) to permit a structure (dwelling) with a height of 40 ft. and to permit side yard setbacks of 10 ft. and 13 ft. in lieu of the required 35 ft., 50 ft., and 50 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.

3. Prior to issuance of permits Petitioners must submit to the DOP building elevations 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.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln