

|                                     |   |                             |
|-------------------------------------|---|-----------------------------|
| <b>IN RE: PETITION FOR VARIANCE</b> | * | BEFORE THE OFFICE           |
| (1201 Bayside Road)                 |   |                             |
| 15 <sup>th</sup> Election District  | * | OF ADMINISTRATIVE           |
| 7 <sup>th</sup> Council District    |   |                             |
| James & Beth Rich                   | * | HEARINGS FOR                |
| <i>Legal Owners</i>                 |   |                             |
|                                     | * | BALTIMORE COUNTY            |
| Petitioners                         |   |                             |
|                                     | * | <b>CASE NO. 2017-0256-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 James and Beth Rich, owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from §§1A04.3.A, 1A04.3.B.2.b and 1A04.3.B.3 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a dwelling height of 38 ft., a front yard setback of 25 ft. from the centerline of a street or road, a side yard setback of 10 ft., a side yard setback of 24 ft. from the centerline of a street or road and building coverage of 23.3% in lieu of the maximum permitted 15% for a replacement dwelling. A site plan was marked as Petitioners’ Exhibit 1.

Owners James and Beth Rich appeared in support of the petition. David Billingsley prepared the site plan and assisted 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), 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 6,909 sq. ft. in size and zoned RC-5. The waterfront property is

improved with a small single-family dwelling which is in poor condition. Petitioners propose to raze that structure and in essentially the same footprint construct a new dwelling. To comply with the RC-5 and flood protection regulations setback and height 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. Petitioners' lot was created by the plat of Evergreen Park (Ex. 4) which was recorded in 1924, long before adoption of the B.C.Z.R. As such the property is 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 **16<sup>th</sup>** 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 dwelling height of 38 ft., a front yard setback of 25 ft. from the centerline of a street or road, a side yard setback of 10 ft., a side yard setback of 24 ft. from the centerline of a street or road and building coverage of 23.3% in lieu of the maximum permitted 15% 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.

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln