

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(12615 Dulaney Valley Road)		
11 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
3 <sup>rd</sup> Council District		
Helen & Robert Streib	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2017-0311-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 Robert Streib, owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from § 1A07.8.B.5.b of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a proposed dwelling and well with setbacks as close as 20 ft. and 10 ft., respectively, from adjacent property that was cultivated or used for pasture in lieu of the minimum required 200 ft. A site plan was marked as Petitioner’s Exhibit 1.

Robert Streib and surveyor Scott Dallas 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. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not oppose the request.

The site is approximately 14.96 acres in size and zoned RC 6. The property is shown as Lot 29 on Plat 1 of Cloverland Farms, recorded in 1997 (Plat Book 69, p. 26). The property is improved with a single-family dwelling constructed in 1937, which obviously predates the 1997 residential subdivision. Petitioner explained his home was originally owned and used by Cloverland Farms as part of its dairy farm and agricultural operations many years ago. Petitioner has owned and lived at the property since 1997. Petitioner proposes to re-subdivide the lot (an

issue discussed in greater detail below) and create a 1.5 acre building lot along the northeast property boundary. To do so requires zoning relief.

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).

The large property has an irregular shape and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be required to create the proposed building lot in the middle of Lot 29, which would interfere with farming operations. 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 intimated (as have other County agencies) Petitioner will be required to submit a “development plan” to create the 1.5 acre lot. Having reviewed the RC-6 regulations, I do not believe Petitioner is required to go through the “full” development process to create one lot. The plat for this portion of the overall development (a 63 acre tract shown on Plat 1, admitted as Exhibit 2) shows 12 density units were permitted while only three were proposed (three single-family dwellings were in fact existing at the time the plat was approved in 1997). In terms of the overall development, the gross area is approximately 297 acres, which yields 59 dwelling units (with only 30 dwellings proposed).

As such there is available density, and in my opinion the Petitioner would only need to

amend the final development plan/plat and secure an exemption from the Development Review Committee (DRC). Indeed, the regulations expressly contemplate “limited exemptions” or “minor subdivision plans” may be approved on RC-6 tracts. B.C.Z.R. §§ 1A07.4.A; 1A07.10. Simply put, development can take place in the RC-6 zone without a “full process” review. It is true Petitioner will need to comply with the conservancy area requirements of the RC-6 zone, and Mr. Dallas indicated he is currently reviewing with the DOP primary and secondary conservancy area designations for the tract.

The DOP also suggested Petitioner would be required to remove certain portions of the evergreen tree buffer which Mr. Streib stated he planted approximately 8-10 years ago along the Dulaney Valley Road frontage. While I am aware Dulaney Valley Road is designated a scenic route, I do not believe Petitioner should be compelled to remove mature trees from his property. There is no indication the trees are in poor condition or present a hazard to motorists traveling along Dulaney Valley Road. The regulations indicate the DOP may only require in an RC-6 zone that landscaping be planted or that existing vegetation not be disturbed. B.C.Z.R. § 1A07.6. As such this will not be included as a condition in the order below.

THEREFORE, IT IS ORDERED, this **13<sup>th</sup>** day of **July, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit a proposed dwelling and well with setbacks as close as 20 ft. and 10 ft., respectively, from adjacent property that was cultivated or used for pasture, in lieu of the minimum required 200 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.

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:dlw