

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2708 Holly Beach Road)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Gerard & Eileen Fieden	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2017-0342-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Gerard & Eileen Fieden, owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to permit a lot area of 0.316 acres in lieu of the permitted 1.5 acres; (2) to permit side yard setbacks of 5 ft. and 13 ft. in lieu of the permitted 50 ft.; (3) to permit a lot coverage of 31.25% in lieu of the permitted 15%; (4) to permit an open projection (porch) with side yard setbacks of 5 ft. and 13 ft. in lieu of the permitted 37.5 ft.; and (5) to permit a proposed garage height of 20 ft. in lieu of the permitted 15 ft. A site plan was marked as Petitioners’ Exhibit 1.

Bernadette Moskunas, whose firm prepared the site plan, 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 Planning (DOP), the Bureau of Development Plans Review (DPR) and Department of Environmental Protection and Sustainability (DEPS). Conditions will be included in the final Order to address the concerns raised by these agencies.

The site is approximately 13,800 square feet in size and zoned RC 5. The property is improved with a single-family dwelling constructed in 1923. Petitioners propose to raze the existing dwelling and in its place construct a new home, although zoning relief is required to do so.

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 lot was created by a plat recorded before the adoption of the B.C.Z.R., and the lot is narrow (approximately 50 ft.) and deep (approximately 281 ft.). As such it is unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct a modern dwelling on the lot. 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 fact, Petitioners submitted a copy of the site plan whereon their adjoining neighbors indicated they did not object to the requests. Petitioners' Exhibit 7.

THEREFORE, IT IS ORDERED, this 2nd day of **August, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance as follows: (1) to permit a lot area of 0.316 acres in lieu of the required 1.5 acres; (2) to permit side yard setbacks of 5 ft. and 13 ft. in lieu of the required 50 ft.; (3) to permit a lot coverage of 31.25% in lieu of the permitted 15%; (4) to permit an open projection (porch) with side yard setbacks of 5 ft. and 13 ft. in lieu of the required

37.5 ft.; and (5) to permit a proposed garage height of 20 ft. in lieu of the maximum 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. Petitioners must provide vegetative screening (to the satisfaction of the DOP) between the proposed accessory structure and the common property boundary with 2710 Holly Beach Road.

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