

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(4109 Baker Lane)		
11 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
James and Kathleen Althoff	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2017-0346-A

* * * * *

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 Kathleen Althoff, owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a new dwelling with a front setback of 10 ft. in lieu of the required 25 ft. A site plan was marked as Petitioners’ Exhibit 1.

James and Kathleen Althoff 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, but noted Petitioners would be required to secure from Baltimore County an easement or fee simple strip to provide access to the site over County-owned land.

The subject property is approximately 22,000 square feet in size and zoned DR 5.5. The property is improved with a single-family dwelling constructed in 1940. Petitioners propose to subdivide the lot, thereby creating two lots (in total). Both lots would be approximately 10,000-11,000 sq. ft. in size, and one lot would contain the existing dwelling. On the other, unimproved, lot Petitioners propose to construct a single-family dwelling, although variance relief is 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).

The lot has irregular dimensions 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 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 **4th** day of **August, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit a new dwelling with a front setback of 10 ft. 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 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 obtain from Baltimore County an easement or strip of land in fee simple, in order to provide access to proposed Lot 2 as shown on the site plan.
3. Prior to issuance of permits Petitioners must obtain from Baltimore County all subdivision and/or development approvals necessary to subdivide the existing tract and create Lot 1 and Lot 2 as shown on the site plan.

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