

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2028 Poplar Road)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Harry Sample, Jr., et al	*	HEARINGS FOR
<i>Legal Owners</i>		
William M. Fejes, <i>Contract Purchaser</i>	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2017-0353-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Harry Sample, Jr., et al, owners of the subject property and William M. Fejes, contract purchaser (“Petitioners”). The variance request pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.) seeks: (1) To allow a lot size of 0.58 acres or 25,387 sq. ft. on the Back River Neck District; (2) To allow a setback for a principal building from the centerline of Poplar Road of 69 ft. in lieu of the required 75 ft.; (3) To allow minimum side yard setbacks of 17 ft. and 20 ft. in lieu of the required 50 ft., respectively; (4) To allow minimum side yard setbacks for a waterfront deck of 20 ft. and 27 ft. in lieu of the required 37.5 ft., respectively; and (5) To allow a minimum side yard setback for a road side porch of 23 ft. in lieu of the required 37.5 ft. A site plan was marked as Petitioners’ Exhibit 1.

Will Fejes and professional engineer Rick Richardson appeared in support of the petition. John Gontrum, Esq. represented the Petitioners. One neighbor attended the hearing to obtain additional information regarding the requests. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS).

The subject property is approximately 0.58 acres in size and is zoned RC-5. The property is unimproved and the contract purchaser proposes to construct a single family dwelling on the lot. Given the onerous setback requirements in the RC-5 zone, 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 waterfront property 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 a dwelling on this 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.

Susan White (a neighbor) expressed concern with whether the grading of the site or construction of the dwelling would increase the volume of storm water which flows across her property. As counsel noted, Petitioners are required by law to complete grading and construction activities in such a manner that does not cause an increased volume of surface water to drain across neighboring properties. Mr. Richardson explained there is a storm drain inlet shown on the plan (on Poplar Road at the southeast corner of the lot) which conveys water through underground pipes into Sue Creek. Ms. White believes this storm drain was constructed in approximately 1980, and as noted in the DPR comment Baltimore County apparently has no record of an easement for this facility.

THEREFORE, IT IS ORDERED, this 12th day of **September, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for variance seeking: (1) To allow a lot size of 0.58 acres or 25,387 sq. ft. on the Back River Neck District; (2) To allow a setback for a principal building from the centerline of Poplar Road of 69 ft. in lieu of the required 75 ft.; (3) To allow minimum side yard setbacks of 17 ft. and 20 ft. in lieu of the required 50 ft., respectively; (4) To allow minimum side yard setbacks for a waterfront deck of 20 ft. and 27 ft. in lieu of the required 37.5 ft., respectively; and (5) To allow a minimum side yard setback for a road side porch of 23 ft. in lieu of the required 37.5 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. Petitioners must prior to issuance of permits comply with flood protection and Chesapeake Bay Critical Area Regulations.
3. Petitioners must convey to Baltimore County at no cost any easement(s) necessary for the operation, inspection and/or maintenance of the storm drain facility at the property.

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