

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(499 A Epsom Road)		
9 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
P & S Builders, Inc.	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2018-0002-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by P & S Builders, Inc., the legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a proposed dwelling with a side yard setback of 18 ft. on both sides in lieu of the minimum side setback of 25 ft. A site plan was marked as Petitioner’s Exhibit 1.

Tom Scherr, Dave Pawloski and Bernadette Moskunas from Site Rite Surveying appeared in support of the petition. Timothy Kotroco, Esq., represented Petitioner. Several neighbors attended the hearing and their concerns are discussed below. 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 Bureau of Development Plans Review (DPR) and is discussed below.

The site is approximately 0.20 acres (8,800 sq. ft.) in size and zoned DR 16. The property is unimproved and Petitioner proposes to construct a single family dwelling on the lot. Petitioner presented a minor subdivision plan from 2007 (Pet. Ex. 1) wherein the original lot known as 408 E. Joppa Road (improved with a single family dwelling converted to office use) was subdivided into two lots, which was when the subject lot was created.

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 property has a 30 ft. grade change, from a high point at Joppa Road sloping downward to Epsom Road. As such the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to construct an attractive and marketable single family dwelling on the lot. This point was driven home at the hearing.

Petitioner presented photos of two single family detached dwellings in the community constructed in the last 10 years or so, and each is three stories in height and no wider than a townhouse. *See* Pet. Ex. 2. The homes were constructed in this fashion to shoehorn them on the lot, and I would suspect the owner did not require a variance to construct these dwellings. The point is, Petitioner has the legal right to construct a house on this lot, and if forced to do so (to recoup its investment) would construct a narrow dwelling which could be built without a variance. In my opinion the community would be better served by an attractive and desirable home at this location

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. Only one dwelling will be constructed on the lot, and P&S Builders has a wealth of experience constructing homes in the County. As such I believe the dwelling will be a positive addition to this community.

In its ZAC comment the DPR noted a storm drain is on the site, and it requested Petitioner provide an easement for that purpose. But as Ms. Moskunas noted at the hearing, the storm drain shown on the plan is not on Petitioner's property, and thus it is unable to convey to Baltimore County an easement interest in property it does not own.

The neighbors who spoke at the hearing expressed concern at the number of trees which would be removed during construction. As I mentioned, the zoning regulations do not address this issue; instead it is a matter handled by the Department of Environmental Protection and Sustainability (DEPS), which would review any requested grading or building permits.

The neighbors were also concerned with the "499A Epsom Road" address proposed for this lot. As I noted at the hearing the Administrative Law Judge is not authorized to assign property address numbers. I certainly understand the concern that this could cause confusion for deliveries and emergency responders, and I would encourage Baltimore County to work with the Petitioner and neighbors to see if a more satisfactory solution can be found.

The final concern was with the volume of storm water which often inundates this area. The increase in the amount of impervious surface, especially when existing single family dwellings in the area are converted to commercial or office use with large parking lots, exacerbates this problem. Ms. Moskunas explained Petitioner plans to direct surface water from the site to an existing storm drain, which lines up with the driveway proposed for the site. As such, I do not believe the construction of a dwelling on this lot would contribute to the heavy volume of storm water which frequently floods the roads and drains in this neighborhood.

THEREFORE, IT IS ORDERED, this 6th day of **September, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R") to permit a proposed dwelling with a

side yard setback of 18 ft. on both sides in lieu of the minimum side setback of 25 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner would be required to return the subject property to its original condition.
2. Only one single family dwelling may be constructed on the lot.
3. Petitioner must consult with a licensed arborist (and provide to Baltimore County evidence of same when applying for grading and/or building permits) prior to clearing the site to determine the safest and most prudent method of determining which trees will be removed from the lot.

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