

|                                     |   |                             |
|-------------------------------------|---|-----------------------------|
| <b>IN RE: PETITION FOR VARIANCE</b> | * | BEFORE THE OFFICE           |
| (3200 Grace Road)                   |   |                             |
| 15 <sup>th</sup> Election District  | * | OF ADMINISTRATIVE           |
| 7 <sup>th</sup> Council District    |   |                             |
| Chesapeake Custom Properties, LLC   | * | HEARINGS FOR                |
| <i>Legal Owner</i>                  |   |                             |
|                                     | * | BALTIMORE COUNTY            |
| Petitioner                          |   |                             |
|                                     | * | <b>CASE NO. 2018-0013-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 Chesapeake Custom Properties, LLC, 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 side street setback of 14 ft. in lieu of the required 16 ft. setback that was granted in Zoning Case No. 2017-0139-A. A site plan was marked as Petitioner’s Exhibit 1.

Melvin Wolinski and David Billingsley appeared in support of the petition. There were no protestants or interested citizens in attendance. On the day of the hearing a petition signed by neighbors opposing the variance was hand-delivered to the Office of Administrative Hearings. 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 Department of Environmental Protection and Sustainability (DEPS). Neither agency opposed the request.

The site is approximately 0.171 acres in size and zoned DR 5.5. The property is unimproved and Petitioner proposes to construct a new dwelling on the lot. Mr. Wolinski indicated he initially planned to build a 24 ft. wide home, though he stated that buyers prefer a

wider dwelling. As such, he proposes a 26 ft. wide single family dwelling which requires a variance.

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 same property was found to be unique in a prior zoning case, at which there was no opposition. See Case No. 2017-0139-A. As such I believe there is no need to revisit the issue in this case. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it 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 Baltimore County opposition.

The neighbors who signed the petition stated they fear granting the variance could “cause a hazard to traffic at Grace Road and Martha Road [sic].” Mr. Billingsley noted many homes on corner lots in this neighborhood are situated within 16 ft. of the road, including the house directly across Martha Avenue from the subject property, which is only 10 ft. from the property boundary. To address the neighbors’ concerns I will impose a condition requiring Petitioner to obtain approval from the Bureau of Traffic Engineering prior to construction of the dwelling.

THEREFORE, IT IS ORDERED, this 6<sup>th</sup> day of **September, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §1B02.3.C.1 to permit a side street setback of 14 ft. in lieu of the required 16 ft. setback that was granted in

Zoning Case No. 2017-0139-A, 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. Petitioner must prior to issuance of permits satisfy critical area and flood protection regulations.
3. Prior to construction of the proposed dwelling Petitioner must obtain confirmation from Baltimore County Department of Public Works, Bureau of Traffic Engineering that the 14 ft. side street set back will not pose a hazard to motorists.

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:sln