

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(1230 Engleberth Road)		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Jane Beach	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2018-0044-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 Jane Beach, the legal owner of the subject property (“Petitioner”). The Petition seeks variance relief from §§ 1A04.3.B.2.a, 1A04.3.B.3 and 301.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a replacement dwelling with a front setback of 45 ft. to the center of the road in lieu of the required 75 ft., to permit a front yard open projection (porch) with a setback of 40 ft. in lieu of the required 56.25 ft., to permit a side yard setback to the center of the road of 47 ft. in lieu of the required 75 ft., to permit a side yard setback of 37 ft. to lot line in lieu of the required 50 ft., and to permit 31.25 % building lot coverage in lieu of the maximum 15%. A site plan was marked as Petitioner’s Exhibit 1.

Property owner Jane E. Beach, John Miller, and Bernadette Moskunas with Site Rite Surveying, Inc. 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 Environmental Protection and Sustainability (“DEPS”), noting Petitioner must comply with Chesapeake Bay Critical Area (“CBCA”) regulations.

The site is approximately 0.496 acres in size and zoned RC 5. The property is comprised of three lots (Lot Nos. 45-57) as shown on the plat of Eagle Nest Point, recorded in 1925. The property is improved with a single family dwelling constructed in 1953, and Petitioner indicated she would like to raze the existing dwelling and construct a larger, modern dwelling, although variances are required given the significant RC 5 setback requirements.

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).

These lots were created long before adoption of the B.C.Z.R. and thus the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because she would be unable to construct the proposed replacement 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 Baltimore County opposition and the support of several neighbors who signed the plan (Exhibit 2) indicating they had no objection to the variance requests.

THEREFORE, IT IS ORDERED, this **19<sup>th</sup>** day of **September, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §§ 1A04.3.B.2.a, 1A04.3.B.3 and 301.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a replacement dwelling with a front setback of 45 ft. to the center of the road in lieu of the required 75 ft., to permit a front yard open projection (porch) with a setback of 40 ft. in lieu of the required 56.25 ft., to permit a side yard setback to the center of the road of 47 ft. in lieu of the

required 75 ft., to permit a side yard setback of 37 ft. to lot line in lieu of the required 50 ft., and to permit 31.25 % building lot coverage in lieu of the maximum 15%, 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 her 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 comply with the Chesapeake Bay Critical Area Regulations.

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:dlw