

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(7407 Beech Avenue)		
14 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Alleen Wiggins and Evelyn Chatmon	*	HEARINGS FOR
<i>Legal Owners</i>		
The Kiley Property Group	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2018-0075-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Alleen Wiggins and Evelyn Chatmon, legal owners of the subject property and The Kiley Property Group, contract purchaser (“Petitioners”). The Petition seeks variance relief from §1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to permit individual side yard widths of 7 ft. in lieu of the required 10 ft. on both sides of the proposed dwelling; and (2) to permit a minimum lot width of 40 ft. in lieu of the required 55 ft. A site plan was marked as Petitioners’ Exhibit 1.

Professional engineer John Motsco and Brendon Kiley appeared in support of the petition. Howard Alderman, Esq. represented the contract purchaser. Two neighbors attended the hearing and opposed the requests. 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 object to the requests.

The site is approximately 8,401 sq. ft. in size and zoned DR 5.5. The property is unimproved and is shown as Lot 125 on the Plat of Cherry Heights. In 1976, a prior owner of the property was granted variance relief to construct a dwelling on the site. A home was never constructed and as Mr. Motsco testified, the dwelling proposed in Case No. 76-209-A

(Petitioners' Exhibit 2) was oriented in such a fashion that the front door would face the neighboring home, rather than Beech Avenue. Petitioners propose to construct a new dwelling which would front on Beech Avenue, and Mr. Motsco testified most of the homes in the neighborhood are so oriented.

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).

Mr. Motsco opined the property was unique due to its narrow and deep configuration (approximately 40' x 206'). 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.

Ron Rims, a neighbor, opposed the variance request and testified that in his opinion the proposed home would be too close to the property line and the adjacent home at 7405 Beech Ave. He feared this could pose a fire safety danger. While public safety is always a concern in zoning matters, there is no indication that the proposed setback would violate any building or fire safety codes, and no county review agency made a comment to that effect.

Of course, many residential units are in fact connected and share a common wall (e.g., townhouses, duplexes and apartments). In these circumstances the codes require sprinklers and fire-resistant construction, and as counsel noted all new dwellings in Maryland must have fire-

suppression sprinkler systems installed. In this case, the proposed dwelling would be 7 ft. from the property line. The International Residential Code specifies that if the exterior walls of a dwelling are less than 5 ft. from a lot line the dwelling must have 1-hour fire-resistant construction. IRC §R302.1. As such, I do not believe the proposed setback would violate any code or regulation.

THEREFORE, IT IS ORDERED, this 25th day of **October, 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.”) as follows: (1) to permit individual side yard widths of 7 ft. in lieu of the required 10 ft. on both sides of the proposed dwelling; and (2) to permit a minimum lot width of 40 ft. in lieu of the required 55 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 comply with the ZAC comment submitted by the DOP, a copy of which is attached hereto.

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:slh