

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(114 Mace Avenue)		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Scott Dawson	*	HEARINGS FOR
<i>Legal Owner</i>		
Joshua Wisneski	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	<b>CASE NO. 2018-0148-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 Scott Dawson, legal owner of the subject property and Joshua Wisneski, contract purchaser (“Petitioners”). The Petition seeks variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a lot width of 50 ft., a lot area of 4,979 sq. ft. and a street side setback of 16 ft. in lieu of the required 55 ft., 6,000 sq. ft. and 25 ft., respectively, for a new dwelling. A site plan was marked as Petitioners’ Exhibit 1.

David Billingsley 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 BCZR. 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 4,979 sq. ft. in size and zoned DR 5.5. The property was previously improved with a single family dwelling, although that structure was in poor condition and was razed. Petitioners propose to construct a new single family dwelling on the lot, although variance relief is required to do so.

As shown on the site plan, the lot is actually 7,837 sq. ft. in size, which would satisfy the minimum lot size and allow Petitioners to also comply with the street side setback (25 ft.) requirement. Even though the Bureau of Real Estate Compliance informed Mr. Billingsley it had no title documents to evidence ownership, Petitioners were willing to grant to Baltimore County a roadway widening easement or right-of-way along Riverside Avenue. The right-of-way area would be 2,858 sq. ft., which explains why the net area listed on the petition is 4,979 sq. ft.

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 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 BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED, this 30<sup>th</sup> day of **January, 2018**, 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 (“BCZR”) to permit a lot width of 50 ft., a lot area of 4,979 sq. ft. and a street side setback of 16 ft. in lieu of the required 55 ft., 6,000 sq. ft. and 25 ft., respectively, for a new dwelling, 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 and incorporated herein.

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