

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(11309 Mayberry Avenue)		
11 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Ellen Elaine Warner	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2018-0159-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Ellen Elaine Warner, legal owner of the subject property (“Petitioner”). The Petition seeks variance relief from Section 1A05.4.D of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a dwelling with a front setback from the center line of the street of 44 ft. in lieu of the required 75 ft. and side yard setback of 17 ft. in lieu of the required 35 ft. A site plan was marked as Petitioner’s Exhibit 1.

Ellen Elaine Warner 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. Substantive Zoning Advisory Committee (“ZAC”) comments were received the Department of Planning (“DOP”), the Bureau of Development Plans Review (“DPR”) and the Department of Environmental Protection and Sustainability (“DEPS”). None of the reviewing agencies objected to the requests.

The site is approximately 28,180 sq. ft. in size and split-zoned RC 50 and RC 2. The lot is unimproved and Petitioner proposes to construct a single-family dwelling on the property. Petitioner explained her brother and sister have recently construct homes adjacent to the subject property on similar size lots.

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 is irregularly shaped and constrained by environmental (critical area) easements. As such it is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because she would be unable to construct proposed dwelling. Finally, I find that the variance 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. The proposed single-family dwelling and building lot would be similar in size to those on the street, and I do not believe granting the request will have a detrimental impact upon the community.

Petitioner provided at the hearing a copy of the January 31, 2005 “Spirit and Intent” letter prepared by Mr. Perlow. Therein, reference is made to Lot Nos. 232, 233 and 68A, which are contiguous and are owned by Petitioner’s family members. Lot 233 is now improved with a dwelling owned by Petitioner’s sister, and Lot 232 is improved with a dwelling owned by Petitioner’s brother. Lot 68A is the subject property. Having reviewed that correspondence I find the requirements contained therein have been met.

THEREFORE, IT IS ORDERED, this 9th day of **February, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §1A05.4.D of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a dwelling with a front setback from the center line of the street of 44 ft. in lieu of the required 75 ft. and side yard setback of 17

ft. in lieu of the required 35 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. Prior to issuance of permits Petitioner must comply with critical area regulations.

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