

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1110 Burke Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Ger Construction, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2018-0199-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Ger Construction, LLC, legal owner of the subject property (“Petitioner”). The Petition seeks variance relief from §§ 1A04.3.A, 1A04.3.B.2.b and 301.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a structure height of 45 ft., side yard setbacks of 35 ft. and 35 ft., a front yard setback of 52 ft. from the center line of any other street or road and an open porch and stairs with a side yard setback of 32 ft. in lieu of the maximum permitted 35 ft., and required 50 ft., 50 ft., 75 ft., and 37.5 ft., respectively for a new dwelling. A site plan was marked as Petitioner’s Exhibit 1.

Jose Urbina and David Billingsley appeared in support of the petition. One neighbor attended the hearing to obtain additional information regarding the requests. 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), the Department of Environmental Protection and Sustainability (DEPS) and the Department of Planning (DOP).

The site is approximately 26,945 sq. ft. in size and zoned RC-5. The property is comprised of two parcels, identified as Lot Nos. 88 & 89 on the Plat of Bowleys Quarters recorded in 1921.

Exhibit 5. Petitioner in 2017 sought relief to construct a single-family dwelling on each of the lots. That request was denied and no appeal was filed. See Case Nos. 2017-0050/51-A. Petitioner now proposes to merge the lots and construct one single-family dwelling on the combined parcels.

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 waterfront property has irregular dimensions which renders it unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to construct a single-family dwelling on the combined lots. 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. This is demonstrated by the absence of County or community opposition.

THEREFORE, IT IS ORDERED, this 16th day of **March, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §§ 1A04.3.A, 1A04.3.B.2.b and 301.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a structure height of 45 ft., side yard setbacks of 35 ft. and 35 ft., a front yard setback of 52 ft. from the center line of any other street or road and an open porch and stairs with a side yard setback of 32 ft. in lieu of the maximum permitted 35 ft., and required 50 ft., 50 ft., 75 ft., and 37.5 ft., respectively for a new dwelling, 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 comply with Chesapeake Bay Critical Area and flood protection regulations.
3. Prior to issuance of permits Petitioner must submit to the DOP elevation drawings of the proposed single-family dwelling to enable that agency to make a positive finding that the RC 5 performance standards have been satisfied.

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