

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(3 S. Morerick Avenue)		
1 st Election District	*	OF ADMINISTRATIVE
1 st Council District		
Evergreen Homes, Inc.	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2018-0205-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Evergreen Himes, Inc., legal owner of the subject property (“Petitioner”). The Petition seeks variance relief from §§ 1B01.2.C.1.B and 400.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to allow a rear yard setback of 27 ft. in lieu of the required 30 ft., and (2) to allow an accessory structure in the side yard in lieu of the required rear yard. A site plan was marked as Petitioner’s Exhibit 1.

Professional engineer Sal Crupi and Brian Macari appeared in support of the petition. Alan Betten, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. No substantive Zoning Advisory Committee (“ZAC”) comments were received from any of the county reviewing agencies.

The site is approximately 1.72 acres in size and zoned DR 5.5. Petitioner is in the process of creating a three-lot minor subdivision on the property. An existing single-family dwelling constructed in 1954 will remain, and two additional lots will be created. Upon the filing of the minor subdivision plan Petitioner was informed zoning relief would be needed for the existing dwelling.

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 an irregular shape and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be required to raze or relocate the single family 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. This is demonstrated by the absence of County or community opposition.

THEREFORE, IT IS ORDERED, this 2nd day of **April, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §§ 1B01.2.C.1.B and 400.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R”): (1) to allow a rear yard setback of 27 ft. in lieu of the required 30 ft.; and (2) to allow an accessory structure in the side yard in lieu of the required rear yard, 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.

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