

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(7519 Fort Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
CMW Properties, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2018-0267-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by CMW Properties, LLC, legal owner of the subject property (“Petitioner”). The Petition seeks variance relief from §1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a side yard setback of 7 ft., lot width of 43.4 ft., and a lot area of 4,426 sq. ft. in lieu of the required 10 ft., 55 ft., and 6,000 sq. ft. respectively, for a replacement dwelling on an existing lot of record. A site plan was marked as Petitioner’s Exhibit 1.

Charles Wolinski and 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. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”).

The site is approximately 4,426 square feet in size and zoned DR 5.5. The subject property is improved with one-half of a semi-detached or duplex dwelling. The home was constructed in 1919 and is in poor condition. Petitioner proposes to raze the structure and construct a single family dwelling on the lot.

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 subject property is narrow and deep and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to construct the proposed replacement 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 Baltimore County and/or community opposition.

In its ZAC comment the DOP recommended that parking for the new dwelling be provided at the rear of the home, along Blank Avenue. Mr. Billingsley explained that in the Blank Plat (recorded in 1944) which created this neighborhood, what is now Blank Avenue was shown as an alley. *See* Ex. 6. Blank Avenue is narrow and provides access and on-street parking for several dwellings located along that road. I believe additional parking on this narrow street/alley could present a safety hazard, and as Mr. Billingsley also noted the proposed home will have a garage and parking pad for residents' vehicles.

THEREFORE, IT IS ORDERED, this 17th day of **May, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to §1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a side yard setback of 7 ft., lot width of 43.4 ft., and lot area of 4,426 sq. ft. in lieu of the required 10 ft., 55 ft. and 6,000 sq. ft., respectively, for a replacement dwelling on an existing lot of record, 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 his 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 the CBCA 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