

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(2909 Raintree Court)		
4 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
2 <sup>nd</sup> Council District		
Battaglia Homes, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2018-0325-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 Battaglia Homes, LLC, legal owner of the subject property (“Petitioner”). The Petition seeks variance relief from Section 1A04.3.2.B of the Baltimore County Zoning Regulations (“BCZR”) to allow a side yard setback of 35 ft. in lieu of the required 50 ft. and to amend the Final Development Plan (“FDP”) for Raintree Farm, for Lot 5 only. A site plan was marked as Petitioner’s Exhibit 1.

Surveyor C. Dudley Campbell and Ben Battaglia appeared in support of the petition. John B. Gontrum, Esq. represented Petitioner. One neighbor attended the hearing to obtain additional information regarding the request. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee (“ZAC”) comments were received from any county agencies.

The site is approximately 1.608 acres in size and zoned RC-5. The property is unimproved and is shown as Lot No. 5 on the plat of Raintree Farms. Petitioner proposes to construct a dwelling on the lot but requires variance relief to do so.

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 subject to a drainage and utility easement which bisects the lot and greatly constrains the building envelope. As such the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to construct a dwelling on the lot. 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 and/or community opposition.

THEREFORE, IT IS ORDERED, this 31<sup>st</sup> day of **July, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Section 1A04.3.2.B of the Baltimore County Zoning Regulations (“BCZR”) to allow a side yard setback of 35 ft. in lieu of the required 50 ft. and to amend the Final Development Plan (“FDP”) for Raintree Farm, for Lot 5 only, 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.

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln