

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(12500 Jerusalem Road)		
11 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
Kurt Heydt	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2019-0016-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Kurt Heydt, the legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from §1A04.3.B.2.b of the Baltimore County Zoning Regulations (“BCZR”) to permit an addition with the setbacks of 25.3 ± ft. and 29.5 ± ft. in lieu of the required 50.0 ft. from any lot line, respectively, and to amend the “Final Development Plan re-subdivision of Lot No. 1 Burman Property” for Lot 1A only. A site plan was marked as Petitioner’s Exhibit 1.

Professional engineer John Motsco and Kurt Heydt appeared in support of the petition. Howard L. Alderman, Jr., Esq. represented Petitioner. The adjoining neighbors attended the hearing and advised they have entered into an agreement with the Petitioner concerning the proposed addition, a point discussed below. 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”). Neither agency opposed the request.

The site is approximately 1.243 acres in size and zoned RC-5. The property is improved with a 2 ½ story dwelling constructed in 1993. Petitioner proposes to construct a 2-story addition

(25' x 30') to his home, although variance relief is required before he can do so. Petitioner made a similar request earlier this year, and the adjoining neighbors opposed the variance in that case. See Case No. 2018-0106-A. Since that time Petitioner redesigned the project and met with his neighbors to discuss the current request. The parties reached an agreement (marked and admitted as Petitioner's Ex. 4) which specifies certain design requirements for the addition, and they have asked that it be incorporated into this order.

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 irregular dimensions and the building envelope is constrained by the location of the well and septic reserve area. As such the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be unable to construct the proposed addition. 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 **28** day of **September, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Section 1A04.3.B.2.b of the BCZR to permit an addition with setbacks of 25.3 ± ft. and 29.5 ± ft. in lieu of the required 50.0 ft. from any lot line, respectively, and to amend the "Final Development Plan re-subdivision of Lot No. 1 Burman Property" for Lot 1A 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.
2. The agreement attached hereto (marked as Petitioner's Exhibit No. 4) shall be expressly incorporated herein, the intent being that the terms of the agreement shall be enforceable by Baltimore County. See *Blakehurst Life Care v. Baltimore County*, 146 Md. App. 509 (2002).
3. Prior to issuance of permit(s) Petitioner must comply with the ZAC comment submitted by DEPS, a copy of which is attached hereto.

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