

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(974 Seneca Park Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Tobias Ott	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2019-0032-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Tobias Ott, the legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”): (1) to permit a principal building having a height of 48 ft. in lieu of the maximum 35 ft.; and (2) together with any required modification of the relief granted in the prior case and such additional relief as the nature of this case may require for approval of the proposed improvements shown on the plan which accompanied this petition. A site plan was marked as Petitioner’s Exhibit 1.

Tobias Ott and professional engineer John Motsco appeared in support of the petition. Howard L. Alderman, Jr., Esq. represented the Petitioner. No protestants or interested citizens were 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”), Bureau of Development Plans Review (“DPR”) and the Department of Environmental Protection and Sustainability (“DEPS”). None of the reviewing agencies opposed the request.

The site is approximately 10,385 square feet (0.238 AC.) in size and zoned RC-5. The

property is unimproved and is within a tidal floodplain, as shown on the site plan. Petitioner proposes to construct a single-family dwelling on the lot, which was created in 1926 upon the filing of the Plat of Seneca Park Beach. In order to comply with the flood protection regulations Petitioner seeks a variance for a dwelling height of 48 ft. in lieu of the maximum 35 ft.

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 floodplain. 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 a single-family 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. In addition, the adjoining lot is improved with a single-family dwelling 48 ft. in height (*See* Case No. 2018-0087-A), so I do not believe the proposed dwelling would be incompatible with its surroundings.

THEREFORE, IT IS ORDERED, this 2nd day of **October, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit a principal building having a height of 48 ft. in lieu of the maximum 35 ft., 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. Petitioner must comply with the ZAC comments of the DPR and DEPS, copies of which are attached.

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