

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(308 A Oberle Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Thomas J. Kane, III & Patrick D. Kane	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2019-0050-A
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Thomas J. Kane, III & Patrick D. Kane, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) to permit a proposed dwelling in a DR 5.5 zone with a lot width of 50 ft. in lieu of the minimum required 55 ft. A site plan was marked as Petitioners’ Exhibit 1.

Thomas Kane and Patrick Kane appeared in support of the petition. Several neighbors attended the hearing to obtain additional information regarding the request. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Environmental Protection and Sustainability (“DEPS”), indicating Petitioners must comply with Chesapeake Bay Critical Area regulations.

The site is approximately 8,534 square feet in size and zoned DR 5.5. The property is unimproved and Petitioners propose to construct a new dwelling on the lot, shown as Lot No. 14 on the plat of Grafolio, recorded in 1916. Petitioners’ Exhibit 2. Adjoining neighbors expressed concern that the new dwelling could create excessive water runoff onto their properties. John Motsco, a professional engineer, explained that with proper grading and small depressions (akin

to but much smaller than a swale) the runoff from the new dwelling will be directed toward the street and not the adjoining homes.

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 lot was created over 100 years ago and is therefore unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they 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. The house will be constructed on a lot that is the same size and width as nearly all other improved building lots in the community, and I do not believe granting the request will have a negative impact upon the community.

Although the petition was filed as a variance request, I believe a single-family dwelling could lawfully be constructed on the lot without a variance, pursuant to BCZR Section 304.

Petitioners satisfy each of the requirements set forth at BCZR Section 304.1:

1. The lot was created long before 1955;
2. The proposed dwelling would be constructed in compliance with the setback, height and area requirements of the DR 5.5 regulations; and
3. The owner does not own sufficient adjoining land to satisfy the lot width requirement.

That regulation was intended to be used in cases like this, where the lot width requirement is imposed upon an otherwise lawful lot created in a plat filed before the adoption of the BCZR..

THEREFORE, IT IS ORDERED, this **2nd** day of **November, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit a proposed dwelling in a DR 5.5 zone with a lot width of 50 ft. in lieu of the minimum required 55 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Prior to issuance of permits Petitioners must comply with Chesapeake Bay Critical Area regulations.
3. Petitioners must during the grading of the site and construction of the proposed dwelling use best efforts to ensure that surface water is discharged into the street and not onto adjoining properties.

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