

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(308 Oberle Avenue)		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Daniel C. & Kelly A. Hueter	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2019-0051-A</b>
	*	
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed on behalf of Daniel C. & Kelly A. Hueter, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”): (1) to permit an existing dwelling in a DR 5.5 zone with a lot width of 50 ft. in lieu of the minimum required 55 ft.; and (2) to permit an existing dwelling in a DR 5.5 zone with side yard setbacks of 7 ft. and 9 ft. in lieu of the minimum required 10 ft. A site plan was marked as Petitioners’ Exhibit 1.

Daniel C. & Kelly A. Hueter appeared in support of the petition. The Petition was advertised and posted as required by the BCZR. The site is approximately 8,346 square feet in size and zoned DR 5.5. The property is improved with a single-family dwelling constructed in 1963. The existing home complied with applicable regulations when it was constructed, and it was only when the DR 5.5 zoning was applied to the property (sometime in the 1970’s) that it became a lawful nonconforming structure under BCZR Section 104. The Petitioners did not file this petition; the Office of Zoning Review requested it to be filed by the owner of the adjacent unimproved lot (Lot No. 14), which was the subject of Case No. 2019-0050-A involving a request to construct a single-family dwelling on an undersized 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 dwelling was constructed over 55 years ago and all conditions (i.e., setbacks, lot width) for which relief is sought are existing. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be required to raze or relocate the 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 County and/or community opposition.

THEREFORE, IT IS ORDERED, this **2nd** day of **November, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance: (1) to permit an existing dwelling in a DR 5.5 zone with a lot width of 50 ft. in lieu of the minimum required 55 ft.; and (2) to permit an existing dwelling in a DR 5.5 zone with side yard setbacks of 7 ft. and 9 ft. in lieu of the minimum required 10 ft., be and is hereby GRANTED.

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