

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(6930 Gunder Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
William & Mildred C. Jones	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2019-0059-A
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by William & Mildred C. Jones, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) to permit side yard setbacks of 9 ft. and 6 ft. and a side yard setback of 5 ft. for an open deck in lieu of the required 10 ft., 10 ft. and 7.5 ft., respectively, for a replacement dwelling. A site plan was marked as Petitioners’ Exhibit 1.

William Jones and David Billingsley appeared in support of the petition. 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 Environmental Protection and Sustainability (“DEPS”) and the Bureau of Development Plans Review (“DPR”). Neither agency opposed the request.

The site is approximately 11,075 square feet in size and zoned DR 5.5. The property is improved with a single-family dwelling constructed in 1924. Petitioners purchased the property last year and plan to raze the existing structure. In its place (and in essentially the same footprint) they would construct a new single-family dwelling, although zoning relief is required for deficient setbacks.

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 waterfront lot is narrow and deep (approximately 50' x 222') and is therefore unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct the proposed replacement 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 12th day of **October, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit side yard setbacks of 9 ft. and 6 ft. and a side yard setback of 5 ft. for an open deck in lieu of the required 10 ft., 10 ft. and 7.5 ft., respectively, for a replacement dwelling, 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 critical area and flood protection regulations.

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