

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(12416 Hunters Glen)		
4 th Election District	*	OF ADMINISTRATIVE
2 nd Council District		
DKW Non-GST Trust	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2019-0103-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by DKW Non-GST Trust, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from Section 1A04.3 of the Baltimore County Zoning Regulations (“BCZR”) to permit a proposed single-family dwelling with side yard setbacks as close as 35 feet in lieu of the minimum required 50 feet; and to amend the Final Development Plan (“FDP”) of Worthington Valley, Lot No. 34 only. A site plan was marked as Petitioner’s Exhibit 1.

Landscape architect Jamie Brown and David Wells appeared in support of the petition. Christopher D. Mudd, Esq. represented Petitioner. There were no Protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency did not oppose the request.

The site is approximately 1.85 acres in size and is zoned RC-5. The property is unimproved and is shown as Lot 34 of the plat of Worthington Valley, recorded in 2006 at PB 78, page 166. Petitioner proposes to construct a single-family dwelling on the lot although a variance is needed given the substantial setbacks required in the RC-5 zone.

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 subject property has an irregular shape and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to construct the proposed single-family 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. In addition, Petitioner submitted letters of support from all neighbors in the immediate vicinity of the subject property. Pet. Ex. 9.

THEREFORE, IT IS ORDERED, this 4th day of **December, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit a proposed single-family dwelling with side yard setbacks as close as 35 feet in lieu of the minimum required 50 feet; and to amend the Final Development Plan (“FDP”) of Worthington Valley, Lot No. 34 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. Petitioner must prior to issuance of building permits revise the site plan with a redlined note demonstrating that the project satisfies the lot coverage limitations in the RC-5 zone.

3. Prior to issuance of building permits Petitioner must submit to the DOP elevations of the proposed single-family dwelling and obtain from that agency a positive finding that the RC-5 performance standards have been satisfied.

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