

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2006 Poplar Road)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Charles E. Tracey, IV	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0126-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Charles E. Tracey, IV, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“BCZR”) to permit a side yard setback of 25 feet in lieu of the required 50 feet for a replacement dwelling on combined existing lots of record. A site plan (signed and sealed by professional engineer Robert Bathurst) was marked as Petitioner’s Exhibit 1.

Charles E. Tracey appeared in support of the petition. There were no protestants or interested citizens 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”), the Bureau of Development Plans Review (“DPR”) and the Department of Environmental Protection & Sustainability (“DEPS”). None of the reviewing agencies opposed the requests.

The site is approximately 24,739 square feet in size and is zoned RC-5. The property is comprised of three separate lots shown on the plat of Cedar Beach, and is improved with a small (approximately 1,200 sf.) single-family dwelling constructed in 1929. Petitioner proposes to raze

the existing dwelling (which is in poor condition) and construct in its place a new single-family dwelling. To do so requires variance relief given the enhanced 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 waterfront property has irregular dimensions and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he 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 28th day of **December, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit a side yard setback of 25 feet in lieu of the required 50 feet for a replacement dwelling on combined existing lots of record, 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. Prior to issuance of permits Petitioner must comply with critical area and flood protection regulations.

3. Petitioner must submit architectural elevations to the DOP for review and approval prior to building permit application.

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