

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(Walnut Avenue)		
3 rd Election District	*	OF ADMINISTRATIVE
4 th Council District		
Russell Moore	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0146-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Russell Moore, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a proposed single-family dwelling with a lot area of 5,850 sq. ft., a lot width of 45', side yard setback of 8' and 8' respectively, in lieu of the minimum required lot area of 6,000 sq. ft., a lot width of 55' and side yard setbacks of 10' and 10', respectively. A site plan was marked as Petitioner’s Exhibit 1.

Professional Engineer Mostafa Izadi 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 Environmental Protection & Sustainability (“DEPS”), Bureau of Development Plans Review (“DPR”) and the Department of Planning (“DOP”). None of the reviewing agencies opposed the request.

The site is approximately 5,850 square feet in size and is zoned DR 5.5. At present the property is unimproved, although Petitioner proposes to construct a single-family dwelling (29'

x 50') on the site. Given the narrow width of the lot variance relief is required before he can do so.

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 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 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.

The Bureau of DPR requested in its ZAC comment Petitioner be required to perform and submit to the County a flood study for the property. Mr. Izadi testified that in his opinion this was unwarranted, since the site is small and is located in a long-established neighborhood. The witness also stated the subject property is not located within the existing 100-year flood plain. In addition, Mr. Izadi submitted a My Neighborhood map (Pet. Ex. 2) which shows the stream referenced in the DPR comment does not abut the subject property, but is in fact on property owned by the State of Maryland which is on the other side of a 15' wide alley which separates the properties. In these circumstances I do not believe Petitioner should be required to prepare a flood study, although (as Mr. Izadi suggested) the site plan should be revised to show the location of the existing flood plain.

THEREFORE, IT IS ORDERED, this 4th day of **January, 2019**, by the Administrative

Law Judge for Baltimore County, that the Petition for Variance to permit a proposed single-family dwelling with a lot area of 5,850 sq. ft., a lot width of 45' and side yard setbacks of 8' and 8' respectively, in lieu of the minimum required lot area of 6,000 sq. ft., lot width of 55' and side yard setbacks of 10' and 10', respectively, 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 revise the site plan to show the location of the existing 100-year floodplain and any utility easements on the property.
3. Prior to issuance of permits Petitioner must comply with the regulations contained in Sections 33-3-101 through 33-3-120 of the Baltimore County Code.

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