

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1316 Burke Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Victor & Rosemary Bongiorno	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2019-0164-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Victor & Rosemary Bongiorno, legal owners of the subject property (“Petitioners”). Petitioners are requesting Variance relief from Sections 1A04.3A, 1A04.3.B.1.a & 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“BCZR”) to permit a building height of 40', a lot area of 0.866 ac ±, a front yard setback of 58' from the center line of any road that leads to or connects with a collector road and side yard setbacks of 30' and 40' in lieu of the maximum permitted 35', 1.5 ac., 100', 50' and 50' respectively for replacement dwelling. A site plan was marked as Petitioners’ Exhibit 1.

Victor Bongiorno and David Billingsley 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 Department of Environmental Protection and Sustainability (“DEPS”) and the Bureau of Development Plans Review (“DPR”). None of the reviewing agencies opposed the request. The site is approximately 0.866 acres in size and zoned RC-5. The unimproved property is comprised of Lot 131 and—pursuant to a lot line adjustment recently approved—a portion of Lot 130 as shown on the plat of Bowleys Quarters.

Pets. Ex. 8. Lot 131 was previously improved with a dwelling, although that was razed in 2009 after suffering flood damage. Petitioners propose to construct a single-family dwelling on the lots.

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 a triangular shape and is therefore unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the 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 29th day of **January, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Sections 1A04.3A, 1A04.3.B.1.a & 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“BCZR”), to permit a building height of 40', a lot area of 0.866 ac. ±, a front yard setback of 58' from the center line of any road that leads to or connects with a collector road and side yard setbacks of 30' and 40' in lieu of the maximum permitted 35', 1.5 ac., 100', 50' and 50' respectively for a replacement dwelling, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- 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.

- Prior to issuance of permits Petitioners must comply with critical area and flood protection regulations.
- Prior to issuance of permits Petitioners must obtain from the DOP a finding 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