

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(42 Gibbons Blvd. Lot C)		
8 th Election District	*	OF ADMINISTRATIVE
3 rd Council District		
Forte Equity II, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0187-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Forte Equity II, LLC, 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 allow a front yard side setback of 19' in lieu of the required 30'; and to allow a rear yard setback of 25' in lieu of the required 30'. A site plan was marked as Petitioner’s Exhibit 1.

Craig Rogers appeared in support of the petition. Timothy M. Kotroco, Esq. represented Petitioner. Three members of the community attended the hearing to obtain additional information regarding the project. 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”) and the Bureau of Development Plans Review (“DPR”).

The site is approximately .2 acres in size and is zoned DR 3.5. Petitioner proposes to construct a single family dwelling on the property. Given the subject property is a corner lot adjoining two public streets (Greenside Drive & Gibbons Blvd.) the zoning regulations impose larger setback requirements. It is from these regulations that Petitioner seeks variance relief.

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).

Mr. Rogers testified (via proffer) the property has irregular dimensions and grade changes across the site. As such the property is 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.

One of the primary concerns of the community was with inadequate storm water drainage on Gibbons Blvd. Neighbors stated this has been a long standing problem in the area, and that the County has refused to intervene, claiming it is the owners' responsibility. I respectfully disagree. Maintenance of roadways and providing/maintaining storm drains is a non-delegable duty of Baltimore County. While I understand installation of new or additional storm drains would be a costly undertaking, the neighbors indicated the situation would be improved greatly by replacing the existing berms on the edges of the roadway. The existing berming is in poor condition, and Baltimore County should repair this condition which would not only improve drainage storm water but enhance traffic safety as well.

THEREFORE, IT IS ORDERED, this 8th day of **March, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("BCZR") to allow a front yard side setback of 19' in lieu of the required 30'; and to allow a rear yard setback of 25' in lieu of the required 30', 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 or subsequent owner(s) of the property shall not be permitted to install a fence in the front yard of the proposed single family dwelling shown on the site plan (Petitioner's Exhibit 1)

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