

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2408 Ruth Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Lawrence R. Theodore	*	HEARINGS FOR
<i>Legal Owner</i>		
Chesapeake Custom Properties, LLC	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2019-0196-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Lawrence R. Theodore, legal owner, and Chesapeake Custom Properties, LLC, contract purchaser of the subject property (“Petitioners”). The Petitioners are requesting variance relief from Sections 229.6.F and 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a street side setback of 14 ft. in lieu of the required 25 ft. for a replacement dwelling. A site plan was marked as Petitioners’ Exhibit 1.

Charles Wolinski 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”) and the Department of Environmental Protection and Sustainability (“DEPS”). Neither agency opposed the request.

The site is approximately 6,000 square feet and is zoned C.B. (Community Business). The C.B. zone permits dwellings by right and uses the adjoining residential zone (which in this case is D.R. 5.5) for bulk and area regulations. The site is now unimproved although a single-family dwelling previously existed on the property, shown as Lot Nos. 26 & 27 on the Plat of Krakow, recorded in 1918. Petitioners’ Exhibit 4. Petitioners propose to construct a new single-family

dwelling on the property but require zoning relief to 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 is narrow (50' wide) and is bound on two sides by public streets. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they 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 **19th** day of **March, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Sections 229.6.F and 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a street side setback of 14 ft. in lieu of the required 25 ft. 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 the critical area regulations.

- Petitioners shall use all reasonable efforts to avoid impacts to the specimen trees on site.
- Petitioners shall provide landscaping and/or privacy fencing along the rear property line adjoining Lot 92, as determined in the sole discretion of the DOP.

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