

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(3806 Chestnut Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Brian & Tracy Logue	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2019-0256-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Brian & Tracy Logue, legal owners (“Petitioners”). The Petitioners are requesting variance relief from Sections 1A04.3.A and 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“BCZR”) to permit a replacement dwelling with a height of 40 feet and side yard setbacks of 8 feet and 10 feet in lieu of the maximum permitted 35 feet and required 50 feet and 50 feet, respectively. A site plan was marked as Petitioners’ Exhibit 1.

Brian & Tracie Logue and David Billingsley appeared in support of the petition. Sheila Johnson (a neighbor), represented by John Gontrum, Esq., opposed the request. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (ZAC) comment was received from the Bureau of Development Plans Review (“DPR”).

The subject property is approximately 21,900 square feet in size and is zoned RC-5. The property was formerly improved with a single-family dwelling although that was razed recently. Petitioners propose to construct a new dwelling on the lot but require variances given the substantial setback requirements imposed by the RC-5 regulations.

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 lot was created long before the adoption of the BCZR and the property is therefore unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct a new dwelling on the lot. 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.

Ms. Johnson expressed concern that the new home would block her view of the water (*i.e.*, Seneca Creek). Following the public hearing Mr. Billingsley prepared a plan whereon he “field located” the dwellings and decks of the adjoining homes at 3804 and 3808 Chestnut Road. That plan was marked as Pets.’ Ex. 10, and Ms. Johnson signed the plan indicating the proposed location of the dwelling was acceptable.

THEREFORE, IT IS ORDERED, this 28th day of **May, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Sections 1A04.3.A and 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“BCZR”) to permit a replacement dwelling with a height of 40 feet and side yard setbacks of 8 feet and 10 feet in lieu of the maximum permitted 35 feet and required 50 feet and 50 feet, respectively, 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 flood protection regulations.

- Within six (6) months of occupying the proposed dwelling Petitioners must remove the opaque walls from the gazebo and replace same with windows.
- No decks or additions of any kind to the proposed dwelling other than as shown on the site plan (Exhibit 1) shall be permitted to extend closer to the waterfront.

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