

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(8248 Northview Road)		
12 th Election District	*	OF ADMINISTRATIVE
1 st Council District		
William R. & Julie A. Kinkel	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0268-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by William R. & Julie A. Kinkel, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from Section 417.4 of the Baltimore County Zoning Regulations (“BCZR”) to permit a replacement pier with setback from the established divisional property lines of 0 ft. and open access strips between facilities of adjoining property owners of 12 ft. and 15 ft. in lieu of the required 20 ft. A site plan was marked as Petitioners’ Exhibit 1.

William Kinkel appeared in support of the petition. One neighbor attended the hearing to obtain additional information regarding the request. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Environmental Protection and Sustainability (“DEPS”). That agency did not oppose the request.

The site is approximately 4,750 square feet in size and is zoned DR 5.5. The waterfront property is improved with a small single family dwelling (“SFD”) constructed in 1945. Petitioners have an existing pier which is in poor condition. Petitioners propose to replace (and extend) the existing pier but require zoning relief to do so. Petitioners originally proposed to

construct an 8' x 8' platform off of the pier, although after their neighbor expressed opposition that feature was removed as shown on the amended site plan marked as Petitioners Exhibit 3.

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 waterfront lot is extremely small and was created by a plat filed long before adoption of the BCZR. 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 replacement pier. 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 3rd day of **June, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations (“BCZR”) to permit a replacement pier with setback from the established divisional property lines of 0 ft. and open access strips between facilities of adjoining property owners of 12 ft. and 15 ft. in lieu of the required 20 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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.
2. Prior to issuance of permits, Petitioners must comply with critical area regulations.

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