

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(47 & 49 Bloomsbury Avenue)		
1 st Election District	*	OF ADMINISTRATIVE
1 st Council District		
John M. & Amy L. Davis	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0323-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by John M. & Amy L. Davis, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from Sections 204 & 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”): **(47 Bloomsbury Avenue)** (1) A minimum net lot area of 5,488 sq. ft. in lieu of 6,000 sq. ft.; (2) a minimum lot width of 35 ft. in lieu of the minimum lot width of 55 ft.; and (3) a minimum front yard depth of 17 ft. in lieu of the minimum required 25 ft. **(49 Bloomsbury Avenue)**: (1) a minimum net lot area of 5,799 sq. ft. in lieu of 6,000 sq. ft., (2) a minimum lot width of 35 ft. in lieu of the minimum lot width of 55 ft.; and (3) a minimum front yard depth of 18 ft. in lieu of the minimum required 25 ft. A site plan was marked as Petitioners’ Exhibit 1.

Professional engineer John Motsco and John Davis appeared in support of the petition. Jason T. Vettori, Esq. represented Petitioners. There were no protestants or interested citizens in attendance. Petitioners submitted letters of support from several nearby residents. Pets. Ex. 4. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee (“ZAC”) comments were received from any of the County reviewing agencies.

The site is approximately 11,287 square feet in size and is zoned RO. The property is improved with a two-story dwelling commonly referred to as a “duplex.” The home was constructed in 1900, and Mr. Motsco testified two individual living units were described in title deeds dating back to at least 1940. Thus, it seems clear the use and structure, as presently existing, is lawfully nonconforming.

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 was constructed more than 50 years prior to the 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 subdivide the property such that each dwelling would be situated on its own 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.

This is demonstrated by the support of the community and the absence of County agency comments. In addition, I believe it is the public interest to encourage home ownership and remove legal impediments preventing the transfer of real property. Granting the relief will allow each dwelling to be conveyed individually, which would serve these goals and likely increase County property tax revenue in the process.

The DOP’s only comment concerned whether it was appropriate to grant a variance to reduce the minimum lot size found in the “small lot table.” As an abstract matter the answer to

that query is obviously “no,” since the regulations explicitly state that a variance cannot be granted if it would result in an increase in residential density. BCZR §307. But that concern is not animated in this case given that the variance will not increase density since the two dwellings have been in existence since at least 1940, as noted above. Such relief could not be granted if Petitioners proposed to construct two new dwellings on an 11,287 square foot parcel in the R.O (D.R. 5.5) zone.

THEREFORE, IT IS ORDERED, this 24th day of **June, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations: **(47 Bloomsbury Avenue)** (1) A minimum net lot area of 5,488 sq. ft. in lieu of 6,000 sq. ft.; (2) a minimum lot width of 35 ft. in lieu of the minimum lot width of 55 ft.; and (3) a minimum front yard depth of 17 ft. in lieu of the minimum required 25 ft. **(49 Bloomsbury Avenue)**: (1) a minimum net lot area of 5,799 sq. ft. in lieu of 6,000 sq. ft., (2) a minimum lot width of 35 ft. in lieu of the minimum lot width of 55 ft.; and (3) a minimum front yard depth of 18 ft. in lieu of the minimum required 25 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.

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