

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1717 Beachwood Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Carolyn F. Sennett	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0506-A

* * * * *

AMENDED OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Carolyn F. Sennett, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from Sections 1A04.3(B)(1)(a) and 1A04.3(B)(2)(b) of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to permit construction on a lot having area of 0.413 acres in lieu of the required 1.5 acres in an RC-5 zone; (2) to permit a building to be situated 55 ft. from the centerline of a road in lieu of 75 ft.; and (3) to permit a building setback of 13 ft., 17 ft. and 40 ft. in lieu of the required 50 ft. in any lot line, respectively. A site plan was marked as Petitioner’s Exhibit 1.

Jeffrey H. Scherr, Esq. represented Petitioner. John Motsco, the professional engineer that drafted and sealed the site plan also attended the hearing. 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”).

The site is approximately 0.413 acres in size and is zoned RC-5. Mr. Scherr explained that there is an existing residence on the property that will be razed and replaced by the proposed new

residence. Further, this lot is part of the Evergreen Park development plat that was recorded in 1924, far before the area was zoned RC5. Mr. Scherr also noted that two other nearby properties – 1712 and 1722 Beachwood Avenue – were recently granted similar variances in Case Nos. 2019-0058-A and 2018-0012-A. Mr. Scherr noted that the 2020 Master Plan and the Eastern Baltimore County Revitalization Strategy call for upscale residential development in the waterfront communities.

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 of a trapezoid shape and is long and narrow. The property lies partially within a tidal floodplain. Further, the development where this lot is located was laid out and recorded well before the area was zoned RC5. As such the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because she would be unable to build the proposed new home. Further, 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 community opposition. The DOP comments express concern about the floodplain issues on this property and those concerns will be addressed in the conditions set forth below. The comments from DEPS also address the potential flooding and wetlands issues but DEPS concluded that if all Critical Area, wetland, and floodplain issues are properly addressed that there will be minimal impacts on the environment. Finally, under principles of *stare decisis* I am persuaded by the recent Orders

granting similar variance relief on this same street.

THEREFORE, IT IS ORDERED, this 17th day of **December, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations: (1) to permit construction on a lot having area of 0.413 acres in lieu of the required 1.5 acres in an RC-5 zone; (2) to permit a building to be situated 55 ft. from the centerline of a road in lieu of 75 ft.; and (3) to permit a building setback of 13 ft., 17 ft. and 40 ft. in lieu of the required 50 ft. in any lot line, respectively, 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 her 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 must prior to issuance of permits comply with the critical area and flood protection regulations.
3. Prior to construction of the proposed single family dwelling Petitioner must satisfy the RC5 performance standards, 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
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/sln