

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(Lot 10 Murray Hill Road)		
9 th Election District	*	OF ADMINISTRATIVE
2 nd Council District		
MCC Properties, LLC	*	HEARINGS FOR
<i>Legal Owner</i>	*	BALTIMORE COUNTY
Petitioner	*	CASE NO. 2019-0542-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by MCC Properties, LLC, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to allow a proposed dwelling on a lot with a lot width of 85 ft. in lieu of the required 100 ft. and a lot size of 18,700 square feet required in a DR 2 zone. A site plan was marked as Petitioner’s Exhibit 1.

Christopher Block, President of MCC Properties, LLC appeared in support of the petition. Timothy Kotroco, Esq. represented Petitioner. The builder, James Scala, was also in attendance. Two neighbors from the Murray Hill community, Mary O’Byrne, and Alex Bushel, attended as interested citizens. 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.

Petitioner called Professional Engineer, Dan Loveless, of WRA Engineering, the firm that prepared and sealed the site plan. He was accepted as an expert in engineering and in the BCZR. His *curriculum vitae* was admitted as Petitioner’s Exhibit 2. Mr. Loveless testified that the site is approximately 18,700 square feet in size and is zoned DR 2. He further explained that this parcel

is in the Murray Hill subdivision whose plat was recorded in 1939, prior to the adoption of the BCZR. The lot is typical of those in this neighborhood in that it is slightly narrower and has slightly less total square footage than the 100 ft. / 20,000 sq. ft. required by the current DR 2 regulations. He then explained, by reference to the site plan, that the proposed residential structure meets all the BCZR setbacks and that the only relief needed are the width and total area variances. A high-lighted copy of the Murray Hill plat was admitted as Petitioner's Exhibit 3 and Mr. Loveless explained that the lots marked in orange are all sub-standard in width, and those in green are sub-standard in total square footage. These lots make up virtually the entire sub-division. He testified that numerous similar variances have been granted in this neighborhood. He also testified that the engineers and builder have met with the Murray Hill Architectural Committee on a continuing basis regarding the design of the proposed residence and its landscaping. A letter from the Murray Hill Architectural Committee was admitted as Petitioner's Exhibit 7, and states in relevant part that "the design was an excellent use of the available space and that the overall design is consistent with the existing homes in the neighborhood."

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).

As noted above, the parcel in question is within a subdivision whose plat was recorded in 1939, prior to the adoption of the BCZR. The lots in this subdivision fail to meet the width and total area requirements of the current DR 2 zone. As such the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be

unable to develop the property at all, even though all other setback requirements can be met. 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 community opposition, or County agency opposition.

I also find that the record evidence establishes that the Petitioner is entitled to relief under BCZR § 304.1 because the lot in question was duly recorded prior to 1955; all other height and area requirements are met; and the owner does not own sufficient adjoining land to conform to the DR 2 width and area requirements.

THEREFORE, IT IS ORDERED, this 17th day of **January, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations to allow a proposed dwelling on a lot with a lot width of 85 ft. in lieu of the required 100 ft. and a lot size of 18,700 square feet required in a DR 2 zone, be and hereby is GRANTED.

IT IS FURTHER ORDERED, that the use of this lot to construct a single family home on an undersized lot pursuant to BCZR § 304.1 be and hereby is 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 its 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 shall conform to the DOP comments regarding the Baltimore County Design Review Panel and shall continue to provide proposed plans to the Murray Hill Architectural Committee as the design is refined.

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