

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(11216 Bird River Grove Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Councilmanic District		
Edward S. and Mary E. Wasilewski,	*	HEARINGS FOR
<i>Legal Owners</i>		
Casey Weikle & Stephanie Montalvo,	*	BALTIMORE COUNTY
<i>Contract Purchaser/Lessee</i>		
Petitioners	*	CASE NO. 2013-0069-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the legal owners of the subject property, Edward S. and Mary E. Wasilewski, and the contract purchasers, Casey Weikle & Stephanie Montalvo, (“Petitioners”). The Petitioners are requesting Variance relief from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a side yard setback of 10’ on both sides and a front yard setback of 62.5’ in lieu of the required 35’ and 75’ respectively, and to approve a lot area of 0.22 acres in lieu of the required 1 acre. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing held for this case was Edward and Mary Wasilewski, Casey Weikle, Stephanie Montalvo, and Douglas E. Fangmann. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. ZAC comments were received from the Department of Planning (DOP) on October 15,

2012, indicating their department does not oppose the request. However, the DOP recommended conditions apply to the proposed dwelling, as follows:

1. Submit building elevations to DOP for review and approval prior to the issuance of any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
2. Provide landscaping along the public road, if applicable.

ZAC comments were also received from the Department of Environmental Protection and Sustainability (DEPS) on October 3, 2012, indicating that Petitioners were obliged to comply with certain Critical Area regulations, as set forth in B.C.Z.R. § 500.14. In addition, a ZAC comment was received from the Bureau of Development Plans Review (DPR) on September 25, 2012, indicating that Petitioners must comply with Baltimore County's various floodplain regulations and building code requirements.

Testimony and evidence revealed that the subject property is 9,570 square feet and is zoned RC 2. The lot is currently vacant, and the Petitioners propose to construct a single-family dwelling (60' x 30') on the lot. The property is served by public water and sewer, and the lot is 50' wide, as is common in waterfront parcels in eastern Baltimore County. Given the relatively large side yard setback requirements in the RC 2 zone, it would be impossible to construct a dwelling without variance relief.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioners have met this test. As shown on the site plan (Exhibit 1), the Bird River shoreline (on which the property fronts) is angled along the northern property boundary, which makes the property “unique” for zoning purposes. In addition, the RC 2 zoning imposes stringent setback requirements, which also makes the property unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty and/or hardship, given that they would be unable to construct a dwelling on the lot. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of opposition from the community and the lack of negative comments from Baltimore County reviewing agencies. As noted in the DOP’s comments, many homes in the area are situated on undersized lots, and thus the relief granted herein will not alter the pattern or appearance of the neighborhood.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 19th day of November, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a side yard setback of 10’ on both sides and a front yard setback of 62.5’ in lieu of the required 35’ and 75’ respectively, and to approve a lot area of 0.22 acres in lieu of the required 1 acre, be and is hereby GRANTED.

The relief granted herein shall be conditioned upon and subject to the following:

1. The Petitioners may apply for any required permits and may be granted same upon receipt of this Order; however the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.
2. The Petitioners must comply with the ZAC comments submitted by the DOP, DEPS, and DPR; copies of which are attached hereto and made a part hereof.

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:dlw