

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(820 Seneca Park Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Councilmanic District		
James C. Barr,	*	HEARINGS FOR
<i>Legal Owner</i>		
William Colberg,	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2013-0075-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 owner of the subject property, James C. Barr, LLC, and the contract purchaser, William Colberg, (“Petitioners”). The Petitioners are requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed replacement dwelling with a side yard setback of 10’ and a combination of side yard setbacks of 22’ in lieu of the minimum of 10’ and a combination of 25’. The Petition also seeks approval for constructing the home on a lot 50’ wide in lieu of the required 70’. 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 William Colberg. 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. A ZAC comment was received from the Department of Planning (DOP) on October 17, 2012 indicating at time of application for the building permit, the applicant should be required to

comply with the provisions of Section 304 (Use of Undersized Single-Family Lots), and elevation drawings of the proposed dwelling and photographs representative of existing dwellings in the neighborhood should be provided for review by the DOP. In addition, ZAC comments were received from the Department of Environmental Protection and Sustainability (DEPS) on October 15, 2012, indicating that Petitioners were obliged to comply with certain Critical Area regulations, as set forth in B.C.Z.R. § 500.14. Finally, ZAC comments were received from the Bureau of Development Plans Review (DPR) dated October 4, 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 15,950 square feet (0.37 acres) and is zoned DR 3.5. The property is improved with a single-family dwelling that has suffered severe flood damage and is now uninhabitable. Apparently, the home has been vacant for 10+/- years. The Petitioner is under contract to purchase the lot, and wants to raze and remove the dilapidated home and rebuild in its place a new home measuring 60' x 28'. To do so requires 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. The lot is very narrow (50') similar to all other lots in this Seneca Park Beach neighborhood. In addition, the lot has angled property boundaries at the waterline and fronting on Seneca Park Road, which also renders the property "unique" in the zoning sense.

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 site.

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. In fact, both of the adjoining neighbors have indicated they are supportive of the request. Exhibit 3. Mr. Colberg indicated that many of the older “shore shack” homes in the area (on 50' wide lots) have been replaced with modern and attractive new dwellings, and photos in the file (Exhibit 2) depict these homes, many of which are much larger than the modest dwelling proposed by the Petitioners.

Finally, I will not require the Petitioners to comply with B.C.Z.R. § 304, as recommended by DOP. This petition seeks relief under B.C.Z.R. § 307 (not § 304), which is a separate mechanism for obtaining variance relief. Even so, and to ensure the proposed dwelling is compatible with the neighborhood, I will condition the relief upon the DOP's approval prior to building permit issuance of building elevation drawings of the home.

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 20th day of November, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed replacement dwelling with a side yard setback of 10' and a combination of side yard setbacks of 22' in lieu of the minimum of 10' and a combination of 25'; and to construct a replacement dwelling on a lot 50' wide in lieu of the required 70', 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. Petitioners must comply with the ZAC comments of DEPS and DPR; copies of which are attached and made a part hereof. In addition and prior to issuance of building permits, the Petitioners must submit for approval to DOP elevation drawings of the proposed dwelling.

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