

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1312 Goose Neck Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Councilman District		
J & M Investments, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0289-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Mark Haynes, Member, on behalf of the legal owner, J & M Investments, LLC. The Variance was filed pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) Sections 1A04.3.B.2.b, 301.2 and 1A04.3.A to permit side yards of 10 feet and 10 feet, a side yard of 4 feet for an open porch and stairs and a height of 45 feet in lieu of the required 50 feet, 50 feet, 37.5 feet and 35 feet, respectively, for a new dwelling on an existing lot of record. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

David Billingsley, who prepared the site plan, appeared in support of the petition. Several neighbors attended the hearing and expressed concern with certain aspects of the petition as filed. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS) dated July 1, 2013, Development Plans Review (DPR) dated June 17, 2013, and Department of Planning (DOP) dated July 3, 2013. DEPS indicated that the subject property is located within a Limited Development Area (LDA)

and a Buffer Management Area (BMA) and is subject to Critical Area requirements. DPR stated that in conformance with Federal Flood Insurance requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction. The DOP does not oppose the Petitioner's request, but indicated that the proposed construction must comply with RC 5 performance standards.

Testimony and evidence revealed that the subject property is approximately 0.356+/- acres and zoned RC 5. The property was improved with a single family dwelling, which was razed in approximately 2005. The Petitioner proposes to construct a modern single family dwelling (a rendering was admitted as Exhibit 8) on the lot but variance relief is required before it can do so.

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).

Petitioner has met this test. The property is waterfront, narrow and deep, which renders it unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, since it would be unable to construct a home 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 absence of County opposition. In addition, and as shown on the aerial photograph (Exhibit 6), the proposed home would be compatible with those in the immediate vicinity and would be positioned on the lot in a similar manner.

As noted earlier, the neighbors on either side of the subject property attended the hearing and objected to the petition as filed. Specifically, they were concerned that their waterfront view would be obstructed, and that the proposed stairs would be unsightly in the location proposed. In response to this testimony, the Petitioner agreed to relocate the proposed dwelling closer to the road, which would necessitate an additional variance. As shown on the site plan (Exhibit 1), the house was originally shown 90' from the front property line. The Petitioner submitted a redlined site plan (Exhibit 10) wherein the dwelling would be positioned 45' from the front property line at Goose Neck Road, and 60' from the center line of the road. The petition in this case was amended at the hearing in this regard, to approve a 45' setback from the front lot line (in lieu of 50') and 60' setback from the center line of Goose Neck Road (in lieu of 75').

As modified, I believe the site plan represents an appropriate compromise. The property was previously improved with a single family dwelling, and both the aerial photo and County sewer plan (Exhibits 6 & 9) reveal that the prior dwelling was positioned on the lot in approximately the same location as shown on the redlined site plan (Exhibit 10). The dwelling proposed is attractive, and the DOP has determined that it satisfies the RC 5 performance standards. In these circumstances, I believe that the Petition (as amended) should be granted.

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 13th day of August, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) Sections 1A04.3.B.2.b, 301.2 and 1A04.3.A to permit side yards of 10 feet and 10 feet, a side yard of 4 feet for an open porch and stairs, a height of 45 feet, front yard of 45 feet and 60 feet from road centerline, in lieu of the required 50 feet, 50

feet, 37.5 feet, 35 feet, 50 feet and 75 feet, respectively, for a new dwelling on an existing lot of record, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- The Petitioner shall remove from the site (and properly dispose) within 15 days of the date of this Order any and all debris or building materials currently on the lot.

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: sln