

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(1822 Beechwood Avenue)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Councilman District		
Kenneth & Susan Anderson	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2014-0066-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Kenneth & Susan Anderson, the legal owners of the subject property. The Petitioners are requesting variance relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a principal residential building in an RC 5 zone with side yard setbacks of 19 ft. and 5 ft. respectively, in lieu of the required 50 ft. 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 in support of the requests was Kenneth & Susan Anderson. Marc Johnston, a home builder, also attended the hearing. The file reveals that the Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition. In fact, the Petitioners submitted letters from the neighbors on both sides of their property expressing support for the petition. Exhibit 2.

The only substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS) dated October 22, 2013 and the Bureau of Development Plans Review (DPR) dated September 24, 2013. These comments

noted that Petitioners must comply with critical area and flood protection regulations.

Testimony and evidence revealed that the subject property is approximately 11,354 square feet and is zoned RC 5. The Petitioners purchased the property in 2007, and would like to construct a new single family dwelling on the lot. At present, the site is improved with a shed (approximately 20' x 13') that will be razed, and also visible are the remnants of the foundation for a dwelling that according to state tax records was constructed in 1935. The lot, like all of those in the neighborhood, is 50' wide, which makes it impossible for the Petitioners to comply with the RC 5 zoning setbacks. As such, they seek variance relief.

Based upon the testimony and evidence presented, I will grant the petition for variance.

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 narrow and deep, and is within a subdivision approved long before the adoption of the B.C.Z.R. As such, the property is unique.

If the B.C.Z.R. were strictly interpreted, the Petitioners would indeed suffer a practical difficulty, given they would be unable to construct a single family 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. Indeed, as noted by the Department of Planning (DOP) in its revised ZAC comment, the proposed dwelling would be compatible with the surrounding community and satisfies the RC 5 zone performance standards.

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 5<sup>th</sup> day of December, 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”) to allow a principal residential building in an RC 5 zone with side yard setbacks of 19 ft. and 5 ft. respectively, in lieu of the required 50 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- Petitioners must comply with the ZAC comments of DPR (dated September 24, 2013) and DEPS (dated October 22, 2013).

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln