

IN RE: PETITION FOR VARIANCE
(2613 Beckleysville Road)
6th Election District
3rd Councilman District
Roy Litz, *Legal Owner*
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2014-0098-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Lawrence E. Schmidt, Esquire, on behalf of the legal owner of the subject property. The Petitioner is requesting Variance relief from §1A09.7.B(5)(b)(1)(a) of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a proposed dwelling with a setback of 94 ft. to an adjacent property that is cultivated, in lieu of the required 300 ft. as determined by the Director of Environmental Protection and Sustainability. The subject property and requested relief is more fully depicted on the two-sheet site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Roy and Susan Litz, and Ken Wells, whose firm prepared the site plan. Lawrence E. Schmidt, Esquire of Smith, Gildea & Schmidt, LLC appeared as counsel and represented the Petitioner. The file reveals that the Petition was properly 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 opposition.

The only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP) dated November 6, 2013. Under the RC 8 (Environmental

Enhancement) regulations, the Director of DOP is required to make certain findings and certify that the variance request is “consistent with the spirit and intent of the regulations.” B.C.Z.R. §1A09.4. The DOP has submitted such a certification in this case, and it was admitted and marked as Petitioner’s Exhibit 5.

Testimony and evidence revealed that the subject property is approximately 13 +/- acres and is zoned RC 8. Two lots are permitted on the parcel, per B.C.Z.R. §1A09.7. The property is improved with a dwelling (over 100 years old) and the Petitioner proposes to create a second lot (3 acres in size) on the parcel. Variance relief is needed for the setback from “cultivated” agricultural lands.

Based upon the testimony and evidence presented, I will grant the request.

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. Petitioner’s counsel notes the property is shaped like an “inverted L”. This irregular shape, and the barns and environmental features (including a pond) render the property unique.

If the B.C.Z.R. were strictly interpreted, the Petitioner would indeed suffer a practical difficulty, given he would be unable to construct the proposed dwelling. 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 support of the DOP. Petitioner also met with Mr. Lippincott of the

Department of Environmental Protection and Sustainability (DEPS), and he was also supportive of the plan.

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 23rd 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 proposed dwelling with a setback of 94 ft. to an adjacent property that is cultivated, in lieu of the required 300 ft. as determined by the Director of Environmental Protection and Sustainability, 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 his 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.

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