

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(4046 Link Avenue)</b>		
11 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Councilman District		
Nicholas Harrigan and Anthony Harrigan	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2014-0186-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 Nicholas Harrigan and Anthony Harrigan, the legal owners of the subject property. The Petitioners are requesting variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed dwelling with a lot width of 50 ft. and a side yard setback of 4 ft. in lieu of the required 55 ft. and 10 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 request was Petitioners Nicholas and Anthony Harrigan. Two neighbors attended the hearing and expressed concerns about the requested relief. The Petition was advertised and posted as required by the B.C.Z.R.

The only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP) dated March 31, 2014. That agency did not oppose the requested relief.

Testimony and evidence revealed that the subject property is approximately 12,600 sq. ft. and is zoned D.R. 5.5. The property is unimproved, and is shown on a subdivision plat approved in 1922, known as Fullerton Farms. Petitioners’ Ex. 3. The Petitioners would like to construct a

single family dwelling on the lot, and have sought variance relief to do so.

In Baltimore County, there are two methods for obtaining approval to construct a house on an undersized or deficient lot. The first is a petition for variance. Based upon the testimony and evidence presented, I will deny 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 cannot meet this test. No evidence or argument was presented to show that the property is unique. The property, known as lot #75, is virtually identical to the more than 100 lots shown on the plat, and is therefore not “unique.”

But the Petitioners may be entitled to relief under B.C.Z.R. §304, which is the second method for obtaining approval to build on a lot that does not meet current zoning standards. That regulation permits a dwelling to be constructed on an “undersized lot” under certain circumstances. Specifically, the regulation permits construction of a dwelling on a lot that does not meet the current width requirements if the owner does not own sufficient adjoining land to conform to the width requirements, and if all other height and area requirements are satisfied. B.C.Z.R. §304.1. Here, the Petitioners do not own sufficient adjoining land, since the neighboring lot which they own (Lot #74) is improved with a single family dwelling and is nonconforming. See Case # 2014-0187-A.

As for the applicable height and area requirements, this case is a bit of an outlier. That is because the lot is within a “duly recorded subdivision plat” (Plat Book W.P.C. 7-52) that was “not approved by the Baltimore County Planning Board or Planning Commission.” B.C.Z.R.

§1B02.3.A.5. As such, this is an “A.5 lot” as described in Mardo Homes v. Balto. Co., Court of Special Appeals No. 120 (Nov. 22, 1977) (unreported). The Mardo Homes court noted that “it would appear that any lot or tract which falls exclusively within subparagraph A.5 would have no applicable development requirements.” Id. That Opinion was issued in 1977; in 1992 Baltimore County adopted the Zoning Commissioner’s Policy Manual (Z.C.P.M.), which provides (in pertinent part) that such an “A.5” lot (i.e., one in a recorded subdivision, yet not approved by the Planning Board or Planning Commission) “must also comply with [the] small lot table.” Z.C.P.M., p. 1B-26.

In light of the above, the Petitioners are entitled to relief under B.C.Z.R. §304, which allows for the erection of a dwelling on a lot that does not meet the width requirements of the B.C.Z.R.. Thus, the lot width of 50’, as sought in the Petition, is acceptable. But the Petitioners must comply with the front, rear and side yard setbacks contained in the small lot table. The site plan (Ex. 1) shows a front yard in excess of 25 feet and a rear yard in excess of 30 feet, both of which are in compliance with the small lot table. Baltimore County holds a 15 foot wide utility easement on the northwest side of the lot, as shown on the plan. Thus, even though the small lot table permits 10 foot side setbacks, in this case the Petitioners must not encroach upon the County’s easement, which means that the side setbacks required are 15 and 10 feet, respectively. Given the lot width, that of course means that the proposed dwelling must be 25 feet wide or less, and not 27 feet as shown on the site plan. For that reason, the site plan as submitted cannot be approved, and the Petitioners must submit an amended plan that complies with the terms of this Order, as noted below.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the petition for variance shall be denied, although zoning relief under B.C.Z.R. § 304 shall be granted.

THEREFORE, IT IS ORDERED, this 22nd day of May, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed dwelling with a lot width of 50 ft. and a side yard setback of 4 ft. in lieu of the required 55 ft. and 10 ft., be and is hereby DENIED.

IT IS FUTHER ORDERED that the Petitioners or their assigns and successors are entitled to construct a single family dwelling on the undersized lot shown as Lot #75 on the Plat of Fullerton Farms, subject to the requirements of B.C.Z.R. §304 and the small lot table found at B.C.Z.R. § 1B02.3.C.

IT IS FURTHER ORDERED that the Petitioners shall submit within 15 days of the date hereof an amended site plan (which will be marked as Petitioners' Ex. 4) which complies with the terms of this Order.

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

JEB:sln

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County