

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(122 First Avenue)		
4 th Election District	*	OF ADMINISTRATIVE
3 rd Councilman District		
John & Kelly Schuit	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2014-0044-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by John & Kelly Schuit, legal owners of subject property. The Petitioners are requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.): (1) to permit a lot width of 52 ft. in lieu of the required 70 ft.; (2) to permit side setbacks of 10 ft. and 8 ft. in lieu of the required 10 ft. and 15 ft.; and (3) to permit a sum of side setbacks to be 18 ft. in lieu of the required 25 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 John Schuit and Vincent Moskunas of Site Rite Surveying, Inc., the firm that prepared the site plan. Two adjoining neighbors (Victoria Snyder and Pamela Wilson) attended the hearing and opposed the petition. The file reveals that the Petition was posted as required by the Baltimore County Zoning Regulations.

The only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP), which did not oppose the petition, but believed that screening was required if relief was granted.

According to the site plan (which was not signed and sealed), the subject property is approximately 10,380 square feet and is zoned DR 3.5. The Petitioners have owned the property since 2009, and propose to construct a single family dwelling on the lot. To do so requires variance relief.

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).

While I believe the property is unique given its irregular dimensions, I do not believe the Petitioners would experience a hardship or practical difficulty if the regulations were strictly interpreted. As an initial matter, state tax records (which, like all public agency records, are presumed to be accurate and reliable) indicate the lot is 8,660 square feet, not 10,380 square feet as shown on the plan. As such, the Petitioners fail to satisfy the minimum lot size (10,000 square feet) required in the DR 3.5 zone. B.C.Z.R. §1B02.3.C.1. The state records also show that the property assessment is just \$2,100.00, meaning that the Petitioners have paid little or no taxes on this property. In my opinion, the property is assessed and taxed as unimproved land without development potential. In these circumstances, I do not believe variance relief is justified.

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.

THEREFORE, IT IS ORDERED, this 7th day of November, 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"): (1) to permit a lot width of 52 ft. in lieu of

the required 70 ft.; (2) to permit side setbacks of 10 ft. and 8 ft. in lieu of the required 10 ft. and 15 ft.; and (3) to permit a sum of side setbacks to be 18 ft. in lieu of the required 25 ft., be and is hereby DENIED.

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