

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(5829 Loreley Beach Road)		
11 th Election District	*	OF ADMINISTRATIVE
5 th Councilman District		
Richard J & Minnie L. Murray	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2014-0008-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Richard J. and Minnie L. Murray, the legal owners of the subject property. The Petitioners are requesting Variance relief from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling situated 50 ft. in lieu of the required 75 ft. from the centerline of the street and with side yard setbacks of 8 ft. and 12 ft. in lieu of the required 35 ft. from any lot line other than a street line. 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 Minnie Murray. 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.

Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS) and the Department of Planning (DOP). DEPS indicated the Petitioners must comply with the Critical Area Regulations, and DOP suggested that the proposed dwelling be situated perhaps 65 ft. from the road centerline.

Testimony and evidence revealed that the subject property is approximately 14,190 square

feet and is zoned RC2. The property is improved with a small single family dwelling, constructed in 1873 according to state tax records. The Petitioners (who at present live in a larger home at 5835 Loreley Beach Road) want to “downsize” and propose to raze the existing dwelling on the subject property and construct in its place a modern single family dwelling, as shown in the elevation drawings. Exhibit 3. To do so requires variance relief.

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

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).

Petitioners have met this test. The waterfront lot is narrow and deep, and therefore unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty, given they 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 lack of community opposition. In responding to the DOP’s comments the Petitioners noted they positioned the proposed house on the lot as shown (50’ from centerline of road) so as not to block their neighbors’ view of the Bird River. In addition, the Petitioners stated that the driveway would be shorter in the configuration proposed, so that less impervious surface would be created in the critical area. These are valid considerations that in my opinion justify the variance relief.

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 9th day of September, 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 permit a proposed dwelling situated 50 ft. in lieu of the required 75 ft. from the centerline of the street and with side yard setbacks of 8 ft. and 12 ft. in lieu of the required 35 ft. from any lot line other than a street line, 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 submit for approval by DOP building elevations of the proposed single family dwelling, prior to the issuance of building permits.

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