

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(3505 Beach Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Councilman District		
Roy E. (Deceased) & Jean Jones, <i>Owner</i>	*	HEARINGS FOR
Robert Long		
<i>Contract Purchaser</i>	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2014-0172-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Roy E. Jones (Deceased) and Jean Jones, legal owners and Robert Long, contract purchaser (“Petitioners”). The Petitioners are requesting variance relief from Sections 1A04.3 and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows: (1) to allow an area of 9,750 sq. ft. in lieu of the required 1.5 acres; (2) to allow an open projection deck with a setback of 13 ft. in lieu of the required 37.5 ft.; (3) to allow a replacement dwelling with a rear yard setback of 33 ft. and 9 ft. setback on both sides in lieu of the required 75 ft. from the centerline of the road and 50 ft. from any lot line, respectively; and (4) to allow a building coverage of 20% in lieu of the maximum required 15%. 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 Robert Long and Bernadette Moskunas, whose firm prepared the plan. The adjoining neighbors on either side of the subject property attended the hearing and opposed the petition. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received from the Department of

Planning (DOP) dated April 7, 2014, the Bureau of Development Plans Review (DPR) dated March 20, 2014, and the Department of Environmental Protection and Sustainability (DEPS) dated April 11, 2014. DPR noted Petitioners were required to satisfy the County's flood protection laws, while DEPS indicated Petitioners must satisfy the Critical Area regulations. The DOP did not oppose the Petition.

Testimony and evidence revealed that the subject property is approximately 9,750 ± square feet and is zoned RC 5. Petitioner (Mr. Long) is planning to purchase the property, and requires variance relief to construct a dwelling on the site. The site was improved with a single family dwelling but the structure had to be razed after suffering extensive storm damage.

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, although I do not believe that the Petition as filed should be granted in its entirety, as discussed below. The lot is narrow and deep, and was created over 80 years ago. As such, it is arguably unique.

If the B.C.Z.R. were strictly interpreted, the Petitioners would suffer a practical difficulty, given they would be unable to construct a replacement dwelling on site. 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 DOP's comment, which found the proposal was consistent with the RC 5 zone performance standards.

The original dwelling on the site was substantially smaller than the one proposed by

Petitioners. While it is true, as noted by the DOP, that many of the original homes in the area have been replaced with much larger dwellings, the circumstances here are such that the proposed structure (w/ 9' side yard setbacks) would "dwarf" the neighboring dwelling at 3507 Beach Road. It would also severely restrict that owner's view of Seneca Creek.

The B.C.Z.R. permits nonconforming structures which are destroyed by casualty to be reconstructed, and the regulations also permit the Zoning Commissioner to authorize an enlargement ("extension") of the original structure by 25% of the ground floor area. B.C.Z.R. §§104.2 and 104.3. I believe that is the more appropriate remedy in this case, and variance relief will be granted to that extent. To address the concerns raised by the neighbors, the side yard setbacks shall be no less than 10 feet.

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 in part and denied in part, as follows.

THEREFORE, IT IS ORDERED, this 23rd day of April, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Sections 1A04.3 and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to allow an area of 9,750 sq. ft. in lieu of the required 1.5 acres; (2) to allow an open projection deck (in the rear yard) with a setback of 13 ft. in lieu of the required 37.5 ft.; (3) to allow a replacement dwelling with a rear yard setback of 33 ft. and 10 ft. setbacks on both sides in lieu of the required 75 ft. from the centerline of the road and 50 ft. from any lot line, respectively; and (4) to the extent necessary when constructing a replacement dwelling that is no greater than 25% larger than the former dwelling on site which was razed, to allow a building coverage of 20% in lieu of the maximum required 15%, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners shall be permitted to construct on the site a replacement dwelling that is (at the maximum) 25% larger than the ground floor area of the former dwelling which was razed due to storm damage.

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 the DEPS and Bureau of DPR, copies of which are attached hereto and incorporated herein.
- Petitioners may extend/increase by up to 25% of the ground floor area of the prior (now razed) structure the size of the replacement dwelling, and the site plan shall be revised accordingly within fifteen (15) days of the date hereof.

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