

IN RE: PETITION FOR VARIANCE
(1200 Burke Road)
15th Election District
6th Council District
David Zichos
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2015-0128-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 on behalf of the legal owner of the subject property. The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§1A04.3.A, 1A04.3.B.1.b and 400: (1) to permit a proposed replacement single family dwelling with a height of 42 ft., a side yard setback of 24 ft. and a building to centerline of a road setback of 66 ft. in lieu of the required 35, 50 & 75 ft., respectively; and (2) to permit a detached accessory structure (pool) to be located in the front yard in lieu of the required rear yard. The subject property and requested relief is more fully depicted on the site plan that was marked as Petitioner’s Exhibit 1.

David Zichos appeared at the hearing with Bernadette Moskunas from Site Rite Surveying, the firm that prepared the site plan. There were no interested citizens in attendance at the hearing. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS), the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

The subject property is approximately 1.19 acres and is zoned RC5. The property is improved with a single family dwelling that was destroyed by fire, 2+ years ago. Petitioner proposes to construct a new dwelling on the property, but requires variance relief to do so.

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. The property is larger than surrounding lots and has an irregular shape, similar to an arrow head. As such, it is unique. If the B.C.Z.R. were strictly interpreted Petitioner would experience a practical difficulty, given he would be unable to construct an appropriate dwelling on the lot. 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 County and/or community opposition. In addition, both of the adjoining neighbors indicated they “fully support” the proposal. Exhibit 4.

THEREFORE, IT IS ORDERED, this 4th day of February, 2015, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”) §§1A04.3.A, 1A04.3.B.1.b and 400: (1) to permit a proposed replacement single family dwelling with a height of 42 ft., a side yard setback of 24 ft. and a building to centerline of a road setback of 66 ft. in lieu of the required 35, 50 & 75 ft., respectively; and (2) to permit a detached accessory structure (pool) to be located in the front yard in lieu of the required rear yard, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Prior to issuance of permits, Petitioner must comply with the Chesapeake Bay Critical Area regulations.
3. Prior to issuance of permits, Petitioner must contact the Department of Public Works (DPW) to determine the applicable flood protection elevation for the site.

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

JEB:sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County