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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE OFFICE |
| (1132 Susquehanna Avenue) | | |
| 15 th Election District | * | OF ADMINISTRATIVE |
| 6 th Council District | | |
| Paul Crist | * | HEARINGS FOR |
| Petitioner | | |
| | * | BALTIMORE COUNTY |
| | | |
| | * | CASE NO. 2014-0248-A |

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Paul Crist, the legal owner of the subject property. The Petitioner is requesting variance relief from §1B02.3.C.1 of Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling with a side yard setback of 4.7 ft. with a sum of 10.7 ft. in lieu of the minimum side yard setback of 10 ft. and a sum of 25 ft. respectively; and (2) to amend the site plan in case # 2013-0296-A. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the request was Paul Crist and Bernadette Moskunos, whose firm prepared the site plan. The Petition was advertised and posted as required by the B.C.Z.R. There were no Protestants in attendance, and the file does not contain any letters of opposition. In fact, the adjoining neighbor at 1130 Susquehanna submitted a letter expressing support for the request. Exhibit 2.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) dated June 11, 2014, and Department of Environmental Protection and Sustainability (DEPS) dated July 8, 2014. DEPS noted Petitioner must comply

with the critical area regulations, while the DOP suggested that landscaping be required.

The property is approximately 16,818 square feet and is zoned DR 3.5. The property is unimproved; Petitioner razed an older single family dwelling that was previously on the site. Petitioner now plans to construct a new single family dwelling, and has received a building permit to do so. However, a question arose concerning how to measure a side yard setback for a cantilevered portion of the new home. In an abundance of caution, Petitioner decided to seek variance relief. In case No. 2013-0296-A, Petitioner was granted variance relief permitting side yard setbacks of 6 feet, in lieu of the 10 feet (25' sum of side yards) required in the DR 3.5 zone. This case seeks to reduce to 4.7' the side yard setback on the northern property boundary, adjoining the property at 1130 Susquehanna Avenue. The setback on the southern boundary (adjoining 1134 Susquehanna Avenue) would remain 6', and the sum of setbacks would be 10.7'.

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. As noted in the earlier case, the waterfront property is narrow and deep, and is therefore unique. Petitioner would experience a practical difficulty if the regulations were strictly interpreted, because he would be unable to construct his home as designed. The variance can be granted in harmony with the B.C.Z.R. and without negatively impacting the health, safety and welfare of the community. This is demonstrated by the lack of County and/or community opposition. As noted above the Petitioner has already received a building permit, and the County's landscape architect did not require any vegetative buffer or fencing prior to permit issuance. The Petitioner has agreed to plant five (5) trees prior to the issuance of a use

and occupancy permit, as noted in the ZAC comment of DEPS. As such, I will not impose any further requirements regarding landscaping and/or fencing.

THEREFORE, IT IS ORDERED, this 16th day of July, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Baltimore County Zoning Regulation (B.C.Z.R.) §1B02.3.C.1 to permit a proposed dwelling with a side yard setback of 4.7 ft. with a sum of 10.7 ft. in lieu of the minimum side yard setback of 10 ft. and a sum of 25 ft. respectively; and (2) to amend the site plan in case # 2013-0296-A, in accordance with the terms of this Order, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

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