

IN RE: PETITION FOR VARIANCE
(4503 Long Green Road)
11th Election District
3rd Council District
Michael Nivens
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2014-0146-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 filed by Michael Nivens, the legal owner of the subject property. The Petitioner is requesting variance relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed dwelling with a front and side setback of 75 feet and 101 feet from the center line of a collector road in lieu of the required 150 and 150 feet, respectively. 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 Michael Nivens. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance and the file does not contain any letters of opposition.

The only substantive Zoning Advisory Committee (ZAC) comment received was from the Department of Planning (DOP) dated February 20, 2014. That agency noted that the property is situated within an “historic setting” (Arnolia United Methodist Church), which required the approval of the Landmarks Preservation Commission (LPC) prior to construction of a dwelling on the property. At its July 10, 2014 meeting, the LPC issued a notice to proceed and approved the plans and design detail for the proposed single family dwelling.

The subject property is approximately 65,436 square feet and is zoned RC 5. The site is unimproved, and Petitioner would like to construct a single family dwelling on the property. Given the configuration of the lot, and the desired location of the dwelling, variance relief is required.

Based upon the testimony and evidence presented, I will grant 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).

Petitioner has met this test. The property is irregularly shaped and is situated within an historic setting. As such it is unique. If the B.C.Z.R. were strictly interpreted, the Petitioner would indeed suffer 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 community and/or county agency opposition, as well as the approval of the LPC.

THEREFORE, IT IS ORDERED, this 21st day of November, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed dwelling with a front and side setback of 75 feet and 101 feet from the center line of a collector road in lieu of the required 150 and 150 feet, respectively, 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.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln