

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(2539 Barrison Point Road)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Council District		
Flightline, LLC	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2015-0024-A</b>

\* \* \* \* \*

**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.B.2.b, 1A04.3.b.3 and 301.1.A to permit a proposed replacement dwelling with a rear yard setback of 33 ft. to the centerline of a road that leads to a collector road, side yard setbacks of 21 ft. and 22 ft. a building coverage of 18% and an open projection (porch) with a side yard setback of 14 ft. in lieu of the required 100 ft., 50 ft., and 50 ft., 15% and 37.5 ft., 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 were David and Stephanie Srour. David Billingsley, whose firm prepared the site plan, appeared on behalf of the Petitioner. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) indicating that prior to building permit application the Petitioner must contact the office of the Director of Public Works to determine the flood protection elevation so that the floor elevation can be set. The Department of Planning (DOP) stated that they have no objection

to the Petitioners request for a variance conditioned upon the following: add vegetative screening along the eastern tract boundary.

Mr. Billingsley proffered on behalf of the Petitioners that the subject lots, totaling approximately 0.441 acres are each 50' wide and are zoned RC 5. There is presently a 1,836 sq. ft. dwelling on one of the lots, which is in serious disrepair. The Petitioners wish to raze this structure and construct a new home in the center of the two lots. The 100' lot frontage, although sufficient for a two-story structure, require under the applicable zoning, 50' side yard setbacks. He noted that the present structure on lot 18 encompasses 23.24% of one lot.

Petitioners planned structure, without a garage, is 13% of the lot coverage, within the permitted 15%. However, they wish to attach a garage instead of constructing an accessory structure. With the garage attached, there is 18% coverage.

Mr. Billingsley asserts that the two properties taken together are unique in that the overwhelming number of homes in the area are constructed on one 50' wide lot. Further, he observes that without the requested variances, the proposed structure cannot be built.

Finally, Petitioners have submitted two letters, one from Mr. James F. Cox, Sr. and the other from Mr. James W. Srour, the adjacent property owners, stating that they have been made aware of the specifications of the new structure and support the granting of the variance.

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 the test. The subject property is unlike the vast majority of other properties within the immediate area, both as to size and frontage, and is therefore unique within the affected area.

It is also clear that if the variances are not granted, the planned structure utilizing both properties could not be built. 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 such relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of County agency opposition (although, based upon the comments of the DPR and the DOP they will have some preliminary requirements before allowing the project to proceed), and the support of the Petitioners neighbors.

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 1<sup>st</sup> day of October, 2014, 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.B.2.b, 1A04.3.b.3 and 301.1.A to permit a proposed replacement dwelling with a rear yard setback of 33 ft. to the centerline of a road that leads to a collector road, side yard setbacks of 21 ft. and 22 ft. a building coverage of 18% and an open projection (porch) with a side yard setback of 14 ft. in lieu of the required 100 ft., 50 ft., and 50 ft., 15% and 37.5 ft., respectively, 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 comply with the ZAC comments of DOP and DPR; which are attached hereto and incorporated herein.

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

LMS:sln

Signed \_\_\_\_\_  
LAWRENCE M. STAHL  
Managing Administrative Law Judge for  
Baltimore County