

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(617 Rockaway Beach Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
David W. & Darlene J. Baugher	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	CASE NO. 2014-0290-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed on behalf of the legal owners of the subject property. The Petition seeks variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) § 1B02.3.C.1 to permit a side yard of 10' in lieu of the required 15' and a sum of side yards of 20' in lieu of the required 25' for a replacement dwelling. 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 request was David and Darlene Baugher. David Billingsley with Central Drafting & Design, Inc., whose firm prepared the site plan, appeared and assisted the Petitioners. Mrs. Goodwin, who lives at 619 Rockaway Beach Avenue, appeared and opposed the relief. The Petition was advertised and posted as required by the B.C.Z.R. No substantive Zoning Advisory Committee (ZAC) comments were received.

The property is approximately 0.271 acres and is zoned DR 3.5. The site is improved with a modest single-family dwelling constructed in 1919. Petitioners propose to raze this dwelling, and construct on the lot a new single family dwelling. To do so requires variance relief.

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. The Petitioners would experience a practical difficulty if the regulations were strictly interpreted, since they would be unable to construct the house as planned, which would be centered on the lot. I believe 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. The home proposed would be similar in size to those nearby. In addition, Mr. Billingsley indicated that the positioning of the home on the lot would satisfy the Buffer Management Area (BMA) regulations promulgated by the Department of Environmental Protection and Sustainability (DEPS). Those regulations (unlike the B.C.Z.R.) contain specific provisions concerning where on a waterfront lot a new or rebuilt home may be located, with the aim of preserving the viewsheds of the adjoining neighbors.

In addition to concerns about their water views (a point discussed above), Ms. Goodwin also stated that she and her husband were concerned with drainage and having a two story structure so close to the property line. The height of the proposed dwelling satisfies the B.C.Z.R., and thus that is not at issue. With respect to the closeness of the proposed home, that is in essence an existing site condition; and one that is dictated by the narrow 50' lot widths in the area. In 2007, the Goodwins were granted variance relief allowing' 4' and 5.5' side yard setbacks. Case No. 2007-0121-A (Petitioners' Exhibit 8). The Petitioners request here is more modest, proposing 10' setbacks on each side. In these circumstances, I do not believe the Protestant's concern is well-founded. Finally, the drainage issues will be addressed by County

reviewers prior to issuance of building permits, and I am confident that Ms. Goodwin's concerns will be addressed.

THEREFORE, IT IS ORDERED, this 4th day of September, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from B.C.Z.R. § 1B02.3.C.1 to permit a side yard of 10' in lieu of the required 15' and a sum of side yards of 20' in lieu of the required 25' for a replacement dwelling, 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.

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:dlw