

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(3628 Bay Dr.)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Council District		
D. Carey Development, LLC	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2015-0031-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 to permit side yard setbacks of 20 ft. for each side in lieu of the required 50 ft. on a lot of record with a dwelling which has been previously razed. 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 Scott Dallas, a licensed surveyor whose firm prepared the site plan. 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 Planning (DOP), the Department of Environmental Protection and Sustainability (DEPS), and the Bureau of Development Plans Review (DPR). The DOP did not oppose the relief, and noted in its September 9, 2014 memorandum that the architectural elevations submitted by the Petitioner satisfy the RC 5 zone performance standards. The DPR indicated that the flood protection elevation would need to be set at the building permit stage, while the DEPS noted Petitioner must comply with the Critical Area regulations.

The subject property is approximately 0.803 acres and is zoned RC 5. The property is comprised of two lots, shown as Lot Nos. 87 & 88 on Plat No. 3 of Bowleys Quarters, dated April 25, 1930. Exhibit 2. Each lot measures 50' x 350', so in the aggregate the lots total 35,000 sq. ft. or 0.8 acres. A single family dwelling existed on site, but was razed approximately 5 years ago. Petitioner would like to construct a single family dwelling on the property, but cannot satisfy the RC 5 area regulations.

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 lots were created by a plat recorded in 1930, and the prior dwelling complied with then-existing regulations. It was only upon the adoption of the RC 5 regulations that the property became nonconforming, and without relief the lots are unbuildable, given the zone setback and area requirements. As such, the property is unique. The Petitioner would experience a practical difficulty if the regulations were strictly interpreted, since it could not construct a dwelling on the lots. Relief can be granted without negatively impacting the community's health, safety and welfare, which is demonstrated by the support of the DOP and the absence of community opposition.

Mr. Dallas explained County Zoning staff did not feel special hearing relief was needed for the deficient lot size, given that Petitioner owned existing lots of record that were previously improved with a single family dwelling. The RC 5 area regulations (B.C.Z.R. §1A04.3.B.1) appear to require special hearing relief in this scenario, and I believe the prudent course is to permit an amendment to the Petition to seek this relief. The Petition was properly advertised and

posted, and I believe the notice provided was sufficient to alert interested parties to the fact that Petitioner intended to construct a single family dwelling on the property, whether or not the deficient lot size was specifically enumerated.

THEREFORE, IT IS ORDERED, this 29<sup>th</sup> day of September, 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.”) to permit side yard setbacks of 20 ft. in lieu of the required 50 ft. on a lot of record with a dwelling which has been previously razed, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Hearing, to approve a lot size of 35,000 sq. ft. or 0.8 acre, in lieu of the required 1.5 acres, 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 its 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.
- Petitioner must comply with the Critical Area regulations prior to approval of a building permit.

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

JEB:sln

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County