

IN RE: PETITION FOR VARIANCE
(2126 Rosalie Avenue)
15th Election District
6th Councilman District
Martin & Sheila A. Beall
Petitioners

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2015-0038-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 on behalf of the legal owners of the subject property. The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) § 1B02.3 to permit a 7 ft. side yard setback in lieu of the required 10 ft. minimum and a sum of side yards of 22 ft. in lieu of the 25 ft. minimum, 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 Martin & Sheila Beall. James Patton, Professional Engineer, whose firm prepared the site plan, assisted Petitioners. The Petition was advertised and posted as required by the B.C.Z.R. Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS). The DOP did not oppose the request, DPR noted that flood elevations must be determined, while DEPS indicated Petitioners must comply with Critical Area regulations.

The subject property is approximately 0.212 acres and is zoned DR 3.5. The lot is

narrow (50' wide) and deep, and is improved with a single family dwelling constructed in 1923. A building consultant hired by Petitioners opined that numerous structural deficiencies exist in the home, and that it “would be more economical to raze the existing structure and build a new home.” Exhibit 2. Petitioners propose to construct a modest dwelling (approximately 28' x 49') on the lot, but require zoning relief to do so.

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 lot is narrow and was created by a plat recorded before the adoption of the B.C.Z.R. As such, the property is unique. If the B.C.Z.R. were strictly interpreted, the Petitioners would suffer a practical difficulty, given they would be unable to construct an appropriate dwelling on the lot to replace the existing home which has fallen into disrepair. 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 opposition from the county or the community.

THEREFORE, IT IS ORDERED, this 29th 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.”) § 1B02.3 to permit a 7 ft. side yard setback in lieu of the required 10 ft. minimum and a sum of side yards of 22 ft. in lieu of the 25 ft. minimum for a replacement dwelling, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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.
2. Petitioners must comply with critical area and flood protection regulations prior to issuance of permits.

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