

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(16332, 16334 & 16342 Matthews Rd.)		
8 th Election District	*	OF ADMINISTRATIVE
3 rd Council District		
Sarah J. Dew, Julia M. Dew &	*	HEARINGS FOR
Bailey A. Dew		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2015-0288-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of Sarah J. Dew, Julia M. Dew and Bailey A. Dew, legal owners of the subject property. The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §1A09.7.B.5.b(1)(a), (b) and (c) to permit a dwelling to be constructed 20 ft. for #16342, 80 ft. for #16332 and 63 ft. for #16334 from an adjacent property that is either: (A) cultivated or used for pasture, or received preferential agriculture assessment at any time over the past five years, (B) land that is suitable for agricultural production, excluding forestry, that is not in production as part of a federal or state conservation program, and (C) land that is suitable for agricultural production, excluding forestry, and is subject to an agricultural or conservation easement, in lieu of the minimum required 300 ft. A site plan was marked as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the request was Sally and Julie Dew. Geoffrey Schultz, a licensed surveyor, assisted the Petitioners. Judith Edgar, a neighbor, attended and opposed the request. Ms. Edgar objected to a dwelling being constructed within 50 ft. of her property boundary. She believed the proposed dwelling was “way too close” to her farm and horse pastures, and she was concerned as well with the loss of privacy.

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) and the Bureau of Development Plans Review (DPR). Neither agency opposed the request, although the DOP suggested that the minimum setback be increased to 50 feet, and that landscaping be provided along the boundary with the Edgar property.

The subject property is approximately 30.744 acres and is zoned RC 8. The Petitioners (who are sisters) inherited the land from their father and would like to construct three (3) single family dwellings (SFD) on the property, but require variance relief to do so. The need for variance relief was generated by the 300 ft. setback requirement contained in the RC-8 zoning regulations. Were this an “ordinary” variance case I believe Petitioners would be entitled to relief, for the reasons noted below. But, the RC-8 zone (which is seldom encountered) and accompanying regulations contain additional requirements that have not been satisfied at this juncture.

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 can satisfy this test. The property is of irregular dimensions and shape, and is therefore unique. The unique and irregular shape of the property complicates the task of siting a dwelling in compliance with the setbacks, and Mr. Schultz presented a map which indicated that the available building envelope (if the 300 ft. setback was observed) would be extremely limited. If the B.C.Z.R. were strictly interpreted Petitioners would experience a practical difficulty, given they would be unable to construct the proposed single family dwellings. 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 County agency opposition.

But as noted above, there are additional requirements associated with a zoning request in the RC-8 zone. The regulations require the Director of the DOP to certify in writing that the request for variance will be consistent with the spirit and intent of the regulations, and certain materials must be provided to the DOP to support such a finding. B.C.Z.R. § 1A09.4.A. In this case the file contains a ZAC comment from the DOP indicating that staff conducted a site visit, but the comment does not contain the necessary findings discussed in the above-cited regulation.

Two other issues merit consideration. First, it is not altogether clear that a 300 ft. “setback” is applicable in this case. The regulations indicate that a dwelling in the RC-8 zone shall be setback 300 ft. from an adjacent property only under certain circumstances “[a]s determined by the Director of Environmental Protection and Sustainability” (“DEPS”). B.C.Z.R. § 1A09.7.B.5.b. In this case, the file does not contain either a ZAC comment from DEPS or the finding/determination required by the aforementioned regulation.

The other issue concerns the density for the proposed subdivision. The state tax records indicate the property contains 29.557 acres, which would entitle Petitioners to 2 lots per B.C.Z.R. § 1A09.7.B.1. But the site plan, which indicates it is based upon a “boundary survey prepared by Gerhold, Cross and Etzel,” Ex. 1, note 29, lists the “net area” as 30.427 acres (after deducting 0.317 acres from the gross figure for highway widening). While state tax records can contain errors, the Petitioners did not provide a copy of any survey definitively stating the acreage of the parcel. The imprecise wording of the regulations further confuses the issue, in that they provide that “10 to 30” acres yields 2 lots, while “30 to 50 acres” yields 3 lots. Assuming Petitioners are correct and the parcel here is 30.427 acres, it is unclear whether 2 or 3 lots would be allowed. The

regulations should have, but did not, provide for 2 lots with “10 to 30” acres and 3 lots with “31 to 50” acres, as was done in the case of parcels with “51 acres or more” in the next portion of the regulation. Without the answers to these questions I do not believe the Petition can be granted, although if Petitioners are able to provide additional information responsive to the above inquiries (in connection with a motion for reconsideration) I will reevaluate the request.

THEREFORE, IT IS ORDERED, this 16th day of September, 2015, 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.”) §§1A09.7.B.5.b(1)(a), (b) and (c) to permit a dwelling to be constructed 20 ft. for #16342, 80 ft. for #16332 and 63 ft. for #16334 from an adjacent property that is either: (A) cultivated or used for pasture, or received preferential agriculture assessment at any time over the past five years, (B) land that is suitable for agricultural production, excluding forestry, that is not in production as part of a federal or state conservation program, and (C) land that is suitable for agricultural production, excluding forestry, and is subject to an agricultural or conservation easement, in lieu of the minimum required 300 ft., be and is hereby DENIED.

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