

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(2043 Old Valley Road)</b>		
3 <sup>rd</sup> Election District	*	OF ADMINISTRATIVE
2 <sup>nd</sup> Council District		
Scott D. & Jennifer Burger	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2016-0185-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 Scott D. and Jennifer Burger, legal owners of the subject property (“Petitioners”). Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to allow an accessory building (garage) to be located in the side yard in lieu of the required rear yard and the third of the lot farthest from both streets, pursuant to §400.1; (2) to allow an accessory building (garage) to have a height of 24 ft. +/- in lieu of the maximum permitted 15 ft., pursuant to §400.3; and (3) to allow an accessory building (pavilion) to have a height of 20 ft. +/- in lieu of the maximum permitted 15 ft., pursuant to §400.3. A site plan was marked as Petitioners’ Exhibit 1.

Jennifer Burger and surveyor Scott Lindgren appeared in support of the Petition. Adam M. Rosenblatt, Esq. represented Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP), concerning landscaping along a scenic route.

The subject property is approximately 10 acres and is zoned RC 2. Petitioners are constructing a dwelling and garage on the property, and also plan to construct a pavilion in the rear

yard. To do so requires variance relief.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Petitioners have met this test. The property contains large swaths of environmentally sensitive areas and is situated on a corner lot bounded by scenic roadways. As such it is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would not be able to construct the proposed improvements. 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. Counsel indicated Petitioners' consultants met with the DOP and shared plans and aerial photographs (Ex. No. 5) reflecting the configuration of the proposed landscaping along the scenic roadways, which addressed that agency's ZAC comment.

THEREFORE, IT IS ORDERED, this 15<sup>th</sup> day of **April, 2016**, 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.") as follows: (1) to allow an accessory building (garage) to be located in the side yard in lieu of the required rear yard and the third of the lot farthest from both streets, pursuant to §400.1; (2) to allow an accessory building (garage) to have a height of 24 ft. +/- in lieu of the maximum permitted 15 ft., pursuant to §400.3; and (3) to allow an accessory building (pavilion) to have a height of 20 ft. +/- in lieu of the maximum permitted 15 ft., pursuant to §400.3, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB/sln