

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1144 Engleberth Road)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Beverly & Kenneth Brazerol	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2016-0132-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 Beverly & Kenneth Brazerol, owners of the subject property (“Petitioner”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§1A04.3.B.2 & 1A04.3.B.3 as follows: (1) to permit a proposed dwelling with a front setback of 9 ft. to the property line and 19 ft. to the centerline of the road in lieu of the required 50 ft. and 75 ft.; (2) to permit a proposed dwelling with a rear setback of 5 ft. and a side setback of 19 ft. in lieu of the required 50 ft. setbacks for each; (3) to permit a front yard open projection with a setback of 5 ft. to the property line and 15 ft. to the centerline of the road in lieu of the required 37.5 ft. and 56.25 ft.; and (4) to permit a proposed dwelling with lot coverage of 40% in lieu of the maximum 15% lot coverage. A site plan was marked as Petitioners’ Exhibit 1.

The owners and Bernadette Moskunas, from Site Rite Surveying, Inc. appeared in support of the Petition. 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 received from the Department of Environmental Protection and Sustainability (DEPS) indicating that the Petitioners must comply with the Chesapeake Bay Critical Area regulations.

The subject property is approximately 6,131 square feet and is zoned RC 5. The property is shown as Lot 25 on the Plat of Eagle Nest Point, recorded in March 1925. A single family dwelling (SFD) existed on the site until approximately 2007, at which time it was razed. Petitioners propose to construct a new dwelling on the lot, in essentially the same footprint as the prior structure.

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 is of irregular dimensions and is therefore unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the proposed single family dwelling. 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/community opposition.

THEREFORE, IT IS ORDERED, this 25th day of February, **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.”) §§1A04.3.B.2 & 1A04.3.B.3 as follows: (1) to permit a proposed dwelling with a front setback of 9 ft. to the property line and 19 ft. to the centerline of the road in lieu of the required 50 ft. and 75 ft.; (2) to permit a proposed dwelling with a rear setback of 5 ft. and a side setback of 19 ft. in lieu of the required 50 ft. setbacks for each; (3) to permit a front yard open projection with a setback of 5 ft. to the property line and 15 ft. to the centerline of the road in lieu of the required 37.5 ft. and 56.25 ft.; and (4) to permit a proposed

dwelling with a lot coverage of 37.9% in lieu of the maximum 15% lot coverage, 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.
2. Petitioners must comply with the ZAC comment from DEPS, a copy of which is attached hereto.
3. Prior to issuance of building permits Petitioners must comply with the RC 5 Performance Standards, as determined by the Department of Planning.

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:/sln