

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2108 Thistlebloom Road)		
1 st Election District	*	OF ADMINISTRATIVE
1 st Council District		
KMW & Associates, LLC	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	CASE NO. 2016-0128-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 KMW & Associates, LLC, owner of the subject property (“Petitioner”). The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) § 402.1.B to permit an existing four apartment dwelling (Duplex) with a side setback of 11.8 ft. in lieu of the minimum setback of 15 ft., and a front setback of 21.3 ft. in lieu of the required 25 ft. A redlined site plan was marked as Petitioners’ Exhibit 1.

Keith Waller and Craig Rodgers from Craig Consulting, LLC appeared in support of the Petition. James D. O’Connor, Esq. with O’Connor, Hammel & Butler. P.A., appeared and represented the Petitioner. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not object to the request but proposed certain conditions for inclusion in the final order.

The subject property is approximately 23,850 square feet and is zoned DR 5.5. The property is comprised of three separate lots (Nos. 12 – 14) in a subdivision known as Windsor Dale. Lot 14 is improved with a 1-½ story dwelling containing four apartments or living units, while Lot Nos. 12 and 13 are unimproved. The property has been used as a four apartment house

for over 20 years, and Petitioner (in connection with an application for financing) seeks variance relief to “legitimize” long existing site conditions.

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).

Petitioner has met this test. The property has irregular dimensions and Petitioner must contend with long-existing site conditions. As such, the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be required to relocate the dwelling, which is an untenable option. 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 Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED, this 11th day of **January, 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.”) § 402.1.B to permit an existing four apartment dwelling (Duplex) with a side setback of 11.8 ft. in lieu of the minimum setback of 15 ft., and a front setback of 21.3 ft. in lieu of the required 25 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner would be required to return the subject property to its original condition.

2. Petitioner must, within 60 days of the date hereof, remove the chain link fence along the road frontage, and provide off-street parking for four (4) vehicles in compliance with the design requirements of B.C.Z.R. § 409.8 (with the exception of screening or landscaping, which shall not be required).

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:/dlw