

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(1222 Riverside Avenue)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Michael W. & Maria J. Darby	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2016-0246-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 Michael W. & Maria J. Darby, legal owners of the subject property (“Petitioners”). Petitioners requests Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§1B02.3.C.1 and 301.1.A to permit side yard setbacks of 10 ft. with the sum of 20 ft. for a replacement dwelling and a side yard setback of 3 ft. for an open porch and stairs in lieu of the required 10 ft., 25 ft. and 7.5 ft., respectively. A site plan was marked as Petitioners’ Exhibit 1.

Owners Michael & Maria Darby and David Billingsley appeared in support of the Petition. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. A Zoning Advisory Committee (ZAC) comment was submitted by the Department of Environmental Protection and Sustainability (DEPS), noting the property is within the Chesapeake Bay Critical Area (CBCA).

The subject property is approximately 15,900 square feet and is zoned DR 3.5. The property is improved with a single-family dwelling (SFD) constructed in 1929 and several outbuildings. Photos reveal these structures are in disrepair. Petitioners propose to raze the existing dwelling and outbuildings, and in their place construct a new SFD with a detached garage.

To do so variance relief is required.

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 narrow and extremely deep, and the existing improvements were constructed long before adoption of the B.C.Z.R. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct a dwelling on the lot. 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 absence of County and community opposition.

THEREFORE, IT IS ORDERED, this 7<sup>th</sup> day of June, **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”) §§1B02.3.C.1 and 301.1.A to permit side yard setbacks of 10 ft. with the sum of 20 ft. for a replacement dwelling and a side yard setback of 3 ft. for an open porch and stairs in lieu of the required 10 ft., 25 ft. and 7.5 ft., respectively, 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. Prior to issuance of permits Petitioners must comply with the Chesapeake Bay Critical Area regulations.

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