

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2612 Holly Beach Road)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Raymond & Karen Evans	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2016-0163-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 Raymond and Karen Evans, legal owners of the subject property (“Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §1A04.3.B.2.b to permit a replacement dwelling to be built with side setbacks of 10 ft. each in lieu of the required 50 ft. each. A site plan was marked as Petitioners’ Exhibit 1.

Raymond and Karen Evans 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. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS).

The subject property is approximately 10,500 square feet and is zoned RC 5. The property is improved with a small single family dwelling (SFD) constructed in 1919. Petitioners propose to raze that structure and in its place construct a small SFD (approximately 2,000 sq. ft.). The waterfront property is located within the critical area, although the Bureau of DPR confirmed it is not in the 100 year flood plain.

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 narrow (50') and deep lot was created long before the adoption of the B.C.Z.R., and the property is therefore unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the proposed 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 absence of community and/or County opposition.

THEREFORE, IT IS ORDERED, this 22nd day of **March, 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.b to permit a replacement dwelling to be built with side setbacks of 10 ft. each in lieu of the required 50 ft. each, 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 Critical Area Regulations.

3. Prior to issuance of permits Petitioners must demonstrate to the DOP's satisfaction their compliance with the RC5 zone performance standards in B.C.Z.R. §1A04.4.

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