

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(9834 Magledt Road)		
11 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
Magledt Road Development, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2015-0301-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 the legal owner of the subject property. The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §1B02.3.C.1 to permit a front yard setback of 33 ft. in lieu of the required 40 ft. A site plan was marked as Petitioner’s Exhibit 1.

Charles Merritt appeared in support of the petition. Howard L. Alderman, Esq. represented the Petitioner. There were no Protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. A Zoning Advisory Committee (ZAC) comment was received from the Bureau of Development Plans Review (DPR).

The subject property is approximately 1 acre and is zoned DR 2. The property is shown as Lot 3 on a minor subdivision plan approved by Baltimore County. Petitioner’s Exhibit 3A & 3B. Petitioner proposes to construct a single family dwelling on the unimproved lot but requires zoning 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 necessitates 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 is irregularly shaped (counsel noted it is shaped alike a “meat cleaver”) and is constrained by a large forest buffer. As such it is unique. If the B.C.Z.R. were strictly interpreted, Petitioner would experience a practical difficulty, given it could not construct an appropriate 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.

The ZAC comment from DPR noted the plain contained duplicate north arrows, and the Petitioner amended the site plan at the hearing to reflect the correct orientation. Exhibit 1. DPR also requested the dwelling be shifted to the right (as shown on the minor subdivision plan) to prevent interference with the County’s utility easement. Counsel explained that the dwelling is in fact in the same location as shown on the approved minor subdivision plan and that it cannot be moved as requested due to the forest buffer. Petitioner has obtained a forest buffer variance permitting the single family dwelling to be situated within 20 ft. of the buffer (in lieu of the required 35 ft.) and counsel stated DEPS would not approve any further encroachment.

THEREFORE, IT IS ORDERED, this 20th day of October, 2015, 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 to permit a front yard setback of 33 ft. in lieu of the required 40 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.

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