

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(718 Nollmeyer)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Council District		
Kevin L. & Christina Maex-Murphy	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2016-0028-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 Kevin L. and Christina Maex-Murphy, owners of the subject property (“Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§ 1B02.3.C.1 and 301.1.A: (1) to permit a proposed replacement dwelling with a side yard setback of 6 ft. and a sum of side yard setbacks of 12 ft. in lieu of the required 10 ft. and sum of 25 ft.; and (2) to permit an open projection with a side yard setback of 3 ft. in lieu of the required 7.5 ft. A site plan was marked as Petitioners’ Exhibit 1.

Kevin and Christina Murphy appeared in support of the petition. David Billingsley, whose firm prepared the site plan, assisted the Petitioners. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. The file contains a letter of support from Andrew and Kimberly Cicchini (who live next door at 720 Nollmeyer). In addition, on the day of the hearing a letter was received from Ms. Lumaro (who owns the property at 716 Nollmeyer) expressing concern about the side yard setback and proposed placement of exterior stairs. A substantive Zoning Advisory Committee (ZAC) comment was received from the Bureau of Development Plans Review (DPR), indicating that any new

construction will need to comply with flood protection regulations.

The subject property is approximately 17,600 square feet and is zoned DR 3.5. The property was improved with a modest dwelling constructed in 1921, which was damaged in Hurricane Isabel. Petitioners have razed that structure and propose to construct a new dwelling on the lot. To do so, variance relief is required.

To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioners have met this test. The lot was created long before the adoption of the B.C.Z.R. and thus the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct a suitable 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 lack of Baltimore County opposition. At the hearing a discussion was held regarding the letter from Ms. Lumaro. Petitioners indicated they would in good faith attempt to meet with and address to the extent reasonably possible their neighbor's concerns.

THEREFORE, IT IS ORDERED, this 5<sup>th</sup> 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 and 301.1.A: (1) to permit a proposed replacement dwelling with a side yard setback of 6 ft. and a sum of side yard setbacks of 12 ft. in lieu of the required 10 ft. and sum of 25 ft.; and (2) to permit an open projection (stairs) with a

side yard setback of 3 ft. in lieu of the required 7.5 ft., 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 flood protection and Critical Area regulations.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB:sln

\_\_\_\_\_  
Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County