

IN RE: PETITION FOR VARIANCE
(3 Patapsco Avenue)
12th Election District
7th Council District
Frank Kaniecki
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2016-0031-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of Frank Kaniecki, legal owner of the subject property (“Petitioner”). The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§ 1B02.3.C.1 and 400.1: (1) to permit a proposed single family dwelling with a side yard setback of 2 ft. 10 in. and a rear yard setback of 10 ft. in lieu of the required 10 and 30 ft., respectively; and (2) to permit an accessory building (in-ground pool) to be located in the front yard of the dwelling in lieu of the required rear yard. A site plan showing these proposed improvements was marked as Petitioner’s Exhibit 1.

Owner Frank Kaniecki appeared in support of the petition. The Petition was advertised and posted as required by the B.C.Z.R. There were no Protestants or interested citizens in attendance. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and the Department of Planning (DOP). Both agencies indicated landscaping would be required to screen the in-ground pool.

The subject property is approximately 5,760 square feet and is zoned DR 5.5. The property is improved with a single family dwelling which was constructed in 1934, and the Petitioner noted the house is in disrepair and needs many improvements. As such, Petitioner proposes to raze the

existing dwelling and in its place construct a new single family dwelling with an in-ground pool in the front of the home. To do so zoning 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).

Petitioner has met this test. The Petitioner must contend with long-existing site conditions and thus the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because he would be unable to construct a new dwelling to replace the existing aging structure. 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. In fact, Petitioner submitted letters of support from all adjoining neighbors.

THEREFORE, IT IS ORDERED, this 6th 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 400.1: (1) to permit a proposed single family dwelling with a side yard setback of 2 ft. 10 in. and a rear yard setback of 10 ft. in lieu of the required 10 and 30 ft., respectively; and (2) to permit an accessory building (in-ground pool) to be located in the front yard of the dwelling in lieu of the required rear yard, 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 his 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 comply with flood protection and Critical Area regulations.
3. Petitioner must provide landscaping to screen the in-ground pool, as determined in the sole discretion of the Baltimore County Landscape Architect.

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