

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(3942 New Section Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Chris Johnson	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner	*	CASE NO. 2016-0312-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 Chris Johnson, owner of the subject property (“Petitioner”). Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§1A04.3.A and 1A04.3.B.2.b to permit a building height of 53 ft. and side yard setbacks of 15 ft. and 15 ft. in lieu of the required 35 ft., 50 ft. and 50 ft., respectively for a replacement dwelling. A site plan was marked as Petitioner’s Exhibit 1.

Owner Chris M. Johnson and David Billingsley from Central Drafting & Design, Inc., appeared in support of the Petition. Two community members attended the hearing to obtain additional information regarding the requests. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from Department of Planning (DOP), Department of Environmental Protection and Sustainability (DEPS) and the Bureau of Development Plans Review (DPR).

The subject property is approximately 0.331 acre and zoned RC 5. The waterfront property is improved with a single family dwelling, which Petitioner proposes to raze. In its place Petitioner would construct a larger and taller dwelling as shown on the elevation drawing (Exhibit 7) submitted at the hearing. 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).

Petitioner has met this test. The property is narrow and deep and is therefore unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because he would be unable to construct a new 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 and/or community opposition.

Alan Robertson, a resident of Bowley's Quarters, indicated the community association does not oppose a building height of 45' in lieu of 35'. The proposed dwelling includes a design feature which is similar to a cupola or "penthouse," which are excluded from the height calculation per B.C.Z.R. §300.1.A. The Petitioner stated there would not be living quarters or accommodations in this space, and I therefore believe it qualifies for the exception, provided of course it also does not have a horizontal area of more than 25% of the roof area of the building, as required by regulation. These elements can be verified by the DOP when it reviews more detailed drawings at the building permit phase of the project. Mr. Robertson testified the community does not oppose this design element, provided the space is not used for living quarters.

THEREFORE, IT IS ORDERED, this 8th day of August, 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.A and 1A04.3.B.2.b to permit a building

height of 45 ft. and side yard setbacks of 15 ft. and 15 ft. in lieu of the required 35 ft., 50 ft. and 50 ft., respectively for a replacement dwelling, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the penthouse or cupola design element shown on Petitioner's Ex. 7 shall be excluded from the height calculation pursuant to B.C.Z.R. 300.1.

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. Prior to issuance of permits Petitioner must comply with the CBCA and flood protection regulations.
3. Petitioner must submit to the DOP detailed drawings of the proposed dwelling so that agency can ensure compliance with the RC 5 zone performance standards.
4. The fourth floor or "penthouse" of the dwelling shall not be used for living quarters.

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