

IN RE: PETITION FOR VARIANCE
(12425 Stony Batter Road)
11th Election District
5th Council District
Dixon Avenue, LLC
Petitioner

*
*
*
*
*

BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2017-0002-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Dixon Avenue, LLC, owner of the subject property (“Petitioner”). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an existing garage to be situated in the front and side yard of a property in lieu of the required rear yard. A site plan was marked as Petitioner’s Exhibit 1.

Charles Merritt appeared in support of the petition. Timothy M. Kotroco, 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 substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Environmental Protection and Sustainability (DEPS). That agency did not oppose the request but indicated it would need to review any proposed permits, since the property is served by well and septic.

The subject property is approximately 0.28 acres and is zoned RC 2. The property was originally improved with a small dwelling and detached garage. The dwelling was razed, and in its place Petitioner has constructed a new single-family dwelling. The detached garage will remain, but due to the location of the new home a variance is required to allow the accessory building in its present location.

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 subject property is small, which is somewhat unique in the RC 2 zone. In addition, Petitioner submitted an exhibit (Petitioner's Ex. 4) which demonstrates the required setbacks from the well severely restrict the available building envelope. As such the property is unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because it would be unable to retain the existing garage which has been in its present location for many years. 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 community opposition.

THEREFORE, IT IS ORDERED, this 23rd day of September, **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.") to allow a garage to be situated in the front and side yard of a property 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 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.
2. Petitioner must obtain approval from the Ground Water Management section of DEPS prior to the issuance of permit(s).

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