

IN RE: PETITION FOR VARIANCE
SE side of Pot Spring Road; 420'
SW of c/line of Old Bosley Road
8th Election District
3rd Council District
(10356 Pot Spring Road)

George W. Denlein
Petitioner

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BEFORE THE
OFFICE OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2011-0326-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Edward C. Covahey, Jr. with Covahey, Boozer, Devan & Dore, P.A., on behalf of the legal owner, George W. Denlein. The Petitioner is requesting Variance relief under Sections 1A04.3.A and 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to permit a dwelling with a height of 43 feet in lieu of the required 35 feet; and, if necessary, (2) to permit a west property line set back of 36 feet in lieu of the required 50 feet, and (3) to amend the approved Final Development Plan, Jones Property (PDM No. VIII-658) approved November 6, 2001. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the variance request were Petitioner George W. Denlein and James Grammer, Professional Land Surveyor with McKee & Associates, Inc., the consultant who prepared the site plan for this property. Also appearing was Edward C. Covahey, Jr., attorney for Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of opposition or protest.

Testimony and evidence revealed that the subject property is an unimproved lot which is irregularly shaped, contains 1.257 acres, and is zoned R.C.5. The Petitioner purchased the property in 2002 (See Deed, marked as Exhibit 2) and it is located within a subdivision approved in 2001 (See Exhibit 5, Order in PDM VIII-658) on what was commonly known as the “Jones Property.”

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. Comments received on June 7, 2011, from the Department of Environmental Protection and Sustainability (DEPS), indicate that Groundwater Management will need to review any proposed building permit for a dwelling on this site. There were no adverse ZAC comments received from any of the County reviewing agencies.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

Under *Cromwell* and its progeny, 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).

The Petitioner has met this test when the subject property is compared to the other lots on the cul-de-sac. The Petitioner’s lot drops off from its point of ingress to the rear of the lot. Mr. Grammer testified that the elevation at the cul-de-sac is approximately 25 feet higher than at the rear of the lot. Hence the request for the height variance, lest the home be virtually invisible from the road through the subdivision. In fact, though the B.C.Z.R. provides a height limitation of 35

feet in an RC 5 zone (B.C.Z.R. § 1A04.3.A), Mr. Grammer testified and provided evidence (see Chart marked as Exhibit 11) that every one of the other five (5) houses on the cul-de-sac exceed a height of 35 feet.

The subject property is unique in another respect: as seen on the site plan, Lot #3 (known as 10356 Pot Spring Road) “pinches in” (to use the words of Mr. Grammer) where it joins the cul-de-sac, and is in that respect very different than the 5 adjoining lots which all have wide openings at the mouth of the lot. This fact, along with the presence of the septic reserve area at the rear (See Exhibit 7) further constricts the building envelope available to Petitioner.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship. As explained by Mr. Grammer, the Petitioner would be unable to construct the home he has been planning to build and for which architectural renderings have been prepared (See Exhibit 9). Indeed, the subdivision is subject to onerous restrictive covenants (See Exhibit 8) and Petitioner has already had his proposed dwelling approved by the architectural committee (See Exhibit 12), and Mr. Grammer opined that the Petitioner could not build the home which has been approved without variance relief.

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.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and after considering the testimony and evidence offered by the Petitioner, I find that Petitioner’s variance requests should be granted.

THEREFORE, IT IS ORDERED, this 15 day of June 2011 by this Administrative Law Judge that Petitioner’s Variance request from Sections 1A04.3.A and 1A04.3.B.2.b of the

Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to permit a dwelling with a height of 43 feet in lieu of the required 35 feet; and (2) to permit a west property line set back of 36 feet in lieu of the required 50 feet be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Final Development Plan, Jones Property PDM VIII-658, be and hereby is AMENDED in accordance with the terms of this Order.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.
2. Petitioner shall comply with the ZAC comments received from the Department of Environmental Protection and Sustainability (DEPS), dated June 7, 2011, which indicate that Groundwater Management will need to review any proposed building permit for a dwelling on this site

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:pz