

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S side Wiltonwood Road; 480 feet		
W of the c/l of Longacre Lane	*	OFFICE OF ADMINISTRATIVE
3 rd Election District		
2 nd Council District	*	HEARINGS FOR
(2211 Wiltonwood Road)		
	*	BALTIMORE COUNTY
Steven A. Miller and Joyce Anne Miller		
<i>Petitioners</i>	*	CASE NO. 2012-0117-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance filed by Steven A. Miller and Joyce Anne Miller, the legal property owners. Petitioners are requesting variance relief from Section 1A04.3B.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit 60 feet (existing) front building setback in lieu of the required 75 feet from the centerline of a street on Lot #3; and to allow a minimum side building setback to any property line of 14 feet in lieu of the required 50 feet. The subject property and requested relief are more fully described on the site plan marked and accepted into evidence as Petitioners’ Exhibit 4.

Appearing at the public hearing were the Petitioner Steven Miller, David Thaler and Joe Mayer with DS Thaler & Associates, Inc., the consultants who prepared the site plan of the property, and Michael Wyatt, Esquire, Counsel for the Petitioners. Appearing as interested citizens were Ralph Ringler and Ann Fraker, nearby property owners.

The Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. Comments were received from the Department of Planning dated December 6, 2011, which state:

“The Department of Planning has reviewed the petitioner’s request and accompanying site plan. The petitioners request the permission of a 14-foot side yard setback in lieu of the required 50 foot setback in order to allow for the re-subdivision of Lot 3 into Lot 3 and a panhandle lot (Lot 3A) and the construction of a new single family dwelling on Lot 3A). A 60-foot setback to the centerline of the street in lieu of the required 75 feet is also requested for the existing dwelling on Lot 3. The subdivision and new construction are subject to Section 1AO4.4 of the BCZR (RC5 Performance Standards) which must be addressed by the petitioner's representative as part of the development process and prior to application of any building permit.

A panhandle package should be submitted to the Department of Planning as part of the variance review process.

If the petitioner demonstrates to the Administrative Law Judge that there is something unique about this lot and the variances are granted, it appears that the following should apply:

- The subject property is a re-subdivision of Lot 3 of the Miller Property, recorded in SM 72 Folio 138 recorded June 15, 2000. Unless otherwise determined by the Department of Permits Approvals and Inspections, it appears that Lot 3A is the fourth lot, which is a major subdivision and should go through the full development process.
- Remove references to minor subdivision from the plan should the subdivision be deemed a major subdivision.
- Architectural elevation drawings must be submitted to the Department of Planning for review of compliance with RC5 Performance Standards and approval.”

The comment from the Department of Planning indicates that this lot is the fourth lot to be subdivided from this property and this matter should proceed through the full development process. However, Mr. Thaler testified that the Applicants have received a waiver of the Development Plan requirements from the Director of the Department of Permits, Approvals and Inspections. That waiver was approved pursuant to Section 32-4-107(b) of the Baltimore County Code. As a waiver has been granted from the development regulations, it is proper for this project to proceed by way of a minor subdivision.

Testimony and evidence offered at the hearing and the site plan submitted into evidence as Petitioners' Exhibit 4 demonstrated that the property which is the subject of this variance request consists of 4.1 acres, more or less, and is zoned RC 5. The property is located on the south side of Wiltonwood Road just west of Longacre Lane. The property is improved with an existing single family dwelling which has been the Millers' home for some time. At this time the property is owned by Joyce Ann Miller and her son, Steven A. Miller. The Millers propose to subdivide the 4.1 acres in the manner depicted on Petitioners' Exhibit 4, the site plan of the property. In order to proceed with the minor subdivision, a variance is necessary in that the fee simple strip of land that provides access of the new lot to be created to Wiltonwood Road causes there to be a 14 foot setback from the existing Miller home. The zoning regulations require that this side yard setback be 50 feet. In addition, the Applicants are requesting the existing house to be situated 60 feet from the centerline of Wiltonwood Road in lieu of the required 75 feet. It should be noted that the house located at 2211 Wiltonwood Road met all setbacks at the time it was constructed. However, the RC 5 regulations have changed since the time the house was built, and the setback deficiencies now exist. As stated previously, two neighbors appeared at the hearing as interested parties. Neither of these neighbors had any objections to the plan to create this additional lot, nor did they have any questions or concerns regarding the matter.

Based on the evidence presented, I find that the variances can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995). 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.

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 held, and after considering the testimony and evidence offered, I find that Petitioners variance requests should be granted.

THEREFORE, IT IS ORDERED by this Administrative Law Judge for Baltimore County this 6 day of March, 2012 that Petitioners' Petition for Variance from Section 1A04.3B.2 of the of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit 60 feet (existing) front building setback in lieu of the required 75 feet from the centerline of a street on Lot #3; and to allow a minimum side building setback to any property line of 14 feet in lieu of the required 50 feet, be and are hereby GRANTED.

The relief granted herein is subject to the following conditions:

1. Petitioners are advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Compliance with the ZAC comments made by the Department of Planning dated December 6, 2011, requiring architectural elevation drawings being submitted for review by the Department of Planning. The remaining comments are inapplicable as a waiver was granted to allow this to proceed as a minor subdivision. A copy of said ZAC comments is attached hereto and made a part hereof.

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

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz