

**IN RE: PETITION FOR VARIANCE**  
NW corner of Chestnut Road and  
Chestnut Road extended  
15<sup>th</sup> Election District  
6<sup>th</sup> Council District  
**(3916 Chestnut Road)**

Harry and Joanna L. McGowan,  
*Legal Owners*  
Kevin and Dawn Harris,  
*Contract Purchasers*  
Petitioners

\* BEFORE THE  
\* OFFICE OF ADMINISTRATIVE  
\* HEARINGS FOR  
\* BALTIMORE COUNTY  
\*  
\* **CASE NO. 2012-0323-A**  
\*

\* \* \* \* \*

**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by the legal owners, Harry and Joanna L. McGowan, and Kevin and Dawn Harris, contract purchasers (the “Petitioners”). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows:

- Section 1A04.3.B.1.a, to permit the alteration of the lot size requirement of 1 ½ acres to an area of 0.80 acres;
- Section 1A04.3.B.2.b, to permit a setback of 42' from the centerline of a road in lieu of the required 75';
- Section 1A04.3.B.2.b, to permit a setback of 27' in lieu of the required 50';
- Section 1A04.3.B.2.b, to permit a setback of 23' in lieu of the required 37.5' (porch);
- Section 1A04.3.A, to permit a height of 42' in lieu of the required 35', and
- Any relief deemed necessary for the Administrative Law Judge.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support for this case was Kevin and Dawn Harris, and Scott Lindgren with Gerhold, Cross & Etzel, Ltd., the consulting firm that prepared the site plan. 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 interested citizens in attendance at the hearing, nor does the file contain any letters of opposition or protest.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received from the Development of Planning on July 16, 2012, indicating that it did not oppose the relief, provided the Petitioners satisfy the RC 5 performance standards.

Testimony and evidence revealed that the subject property is 34,660 square feet and is zoned RC 5. The property is unimproved, though it had a dwelling on the site that was razed several years ago after being damaged in Hurricane Isabel. The subject property is somewhat large (0.8 acres) compared to adjacent lots, most of which are 50' wide, as is common in the area. The property is served by public water and sewer (via grinder pumps) which is also unique for an RC zoned property. Petitioners submitted an exhibit showing that their immediate neighbor, as well as several other owners in the vicinity, obtained zoning relief to build or reconstruct homes on undersized parcels in this vicinity. Exhibit 2.

Based upon the testimony and evidence presented, I will grant the request for variance relief. 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).

Petitioners have met this test. The property is on a corner lot and is pie shaped, which makes it difficult for Petitioners to comply with the setback requirements. In addition, the 1.5 acre lot size requirement for RC 5 zones is designed to accommodate a well and septic system (and septic reserve area), while this property is served by public water and sewer.

The Petitioners would experience a practical difficulty if the regulations were strictly enforced, since they would be unable to construct a home on this lot. Finally, I do not believe the zoning relief will be detrimental to the community's health, safety and welfare, as demonstrated by the lack of opposition and the support of Petitioners' neighbors (Exhibit 4).

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED, this 1<sup>st</sup> day of August, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance from the Baltimore County Zoning Regulations ("B.C.Z.R."), as follows:

- Section 1A04.3.B.1.a, to permit the alteration of the lot size requirement of 1 ½ acres to an area of 0.80 acres;
- Section 1A04.3.B.2.b, to permit a setback of 42' from the centerline of a road in lieu of the required 75';
- Section 1A04.3.B.2.b, to permit a setback of 27' in lieu of the required 50';
- Section 1A04.3.B.2.b, to permit a setback of 23' in lieu of the required 37.5' (porch), and
- Section 1A04.3.A, to permit a height of 42' in lieu of the required 35',

be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. The Petitioners may apply for their building permit and may be granted same upon receipt of this Order. However the Petitioners are hereby made aware that proceeding at this time is at their 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 Petitioners will be required to return and be responsible for returning said property to its original condition.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:dlw