

IN RE: PETITION FOR VARIANCE
(1502 Burke Road)
Todd & Lauren Rebbel
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2013-0011-A**

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by the legal owners, Todd & Lauren Rebbel. The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows:

1. § 1A04.3.B.2.b, to permit side setbacks of 15' and 12' in lieu of the required 50',
2. § 1A04.3.A, to permit a height of 39' in lieu of the maximum allowed height of 35',
3. § 1A04.3.B.1.b.1, to permit a dwelling to be built on a lot that is 0.443 acres in lieu of the required minimum lot size of 1.5 acres, and
4. § 400.1, to permit an existing garage to be located in the front of the property in lieu of the required placement in the rear.

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 Todd and Lauren Rebbel. Michelle Prettyman, a neighbor at 1500 Burke Road, also attended the hearing. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. A ZAC comment was received from the Bureau of Development Plans Review (DPR) dated July 31, 2012 indicating that Petitioners must comply with Baltimore County's various floodplain regulations and building code requirements. In addition, ZAC comments were submitted from the Department of Environmental Protection and Sustainability (DEPS) dated September 5, 2012, indicating that Petitioners were obliged to comply with certain Critical Area regulations, as set forth in B.C.Z.R. § 500.14. Finally, ZAC comments were also received from the Department of Planning (DOP), which made certain recommendations designed to ensure the property satisfies the performance standards set forth at B.C.Z.R. § 1A04.4.

Testimony and evidence revealed that the subject property is 19,305 square feet and is zoned RC 5. The property is waterfront (facing Galloway Creek) and is improved with a dwelling constructed in 1937. The Petitioners plan to raze the existing home, and construct in its place a new home with almost the same footprint as the old structure. To do so requires variance relief.

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 unique in at least two respects. First, though the site is less than ½ acre in size, it is zoned RC 5, which imposes stringent setback and height requirements. In addition, the property is improved with a dwelling and garage, and thus the Petitioners must contend with these existing site conditions. The Petitioners would experience a practical difficulty if the regulations

were strictly enforced, since they would be unable to construct the new home they have planned with their builder. Finally, I do not believe the zoning relief will be detrimental to the community's health, safety and welfare.

For the most part, the relief requested was uncontroversial, except for two items. Petitioners' neighbor, Michelle Prettyman, expressed concern with the adequacy of the storm water drainage on site. The Petitioners' indicated they shared this concern, and would ensure that the County's requirements were observed. In any event, DEPS will no doubt review (at the permit stage) this issue to ensure compliance.

The second issue concerned the height variance, and Ms. Prettyman indicated she was opposed to the request. The RC 5 zone permits 35', while the Petitioners' proposed home would be 39' in height. Even so, the dwelling itself will be under 35', and as a design element the Petitioners want to construct an "observatory" on the top of the home. Mr. Rebbel indicated this would be unfinished space, and would add about 4' to the height of the dwelling. See Exhibit 2 (sketch). In determining the height of a structure, the Zoning Commissioner's Policy Manual (ZCPM) indicates that "cupolas or towers may exceed 35' (in an RC 5 zone) when part of a conforming building." ZCPM, § 1-1.4. Though I am by no means an architect, the feature which Petitioners describe as an "observatory" is akin to a "widow's walk" (or watch) often found on coastal homes, and I believe it can properly be referred to as a "cupola."

As such, I do not believe that the Petitioners actually need variance relief for the construction of this "observatory," as shown on their building sketch. As noted by Petitioners, this is an aesthetic – rather than functional – feature that will complement the water-front nature of the home. To eliminate any doubt on the point, I will grant the relief for the height variance as requested, but as noted I do not believe such relief is required in the first instance.

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

THEREFORE, IT IS ORDERED, this 11th day of September, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance relief from the Baltimore County Zoning Regulations ("B.C.Z.R."), as follows:

1. § 1A04.3.B.2.b, to permit side setbacks of 15' and 12' in lieu of the required 50',
2. § 1A04.3.A, to permit a height of 39' in lieu of the maximum allowed height of 35',
3. § 1A04.3.B.1.b.1, to permit a dwelling to be built on a lot that is 0.443 acres in lieu of the required minimum lot size of 1.5 acres, and
4. § 400.1, to permit an existing garage to be located in the front of the property in lieu of the required placement in the rear.

be and is hereby GRANTED.

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

1. The Petitioners may apply for any building permits 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.
2. Petitioners must comply with the ZAC comments of DRP, DEPS and DOP; copies attached and made a part hereof.

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:dlw