

IN RE: PETITION FOR VARIANCE
(1216 Burke Road)
15th Election District
6th Councilmanic District
Angela Acitelli
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0096-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the legal owner of the subject property, Angela Acitelli. The Petitioner is requesting Variance relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed replacement dwelling to have side yard setbacks of 8 ft. each in lieu of the required 50 ft. 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 held for this case was Aldo and Christian Acitelli and Thomas A. Church, P.E., with Development Engineering Consultants Inc., the firm that prepared the site plan. Also appearing was Charles Cargile and Milton Bell. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the record of this case. A ZAC comment was received from the Department of Environmental Protection and Sustainability (DEPS) on December 7, 2012 indicating that Petitioner is obliged to comply with certain Critical Area regulations, as set forth in B.C.Z.R. § 500.14. The Bureau of

Development Plans Review (DPR) submitted a comment indicating Petitioner must comply with the County's flood protection regulations. Finally, the Department of Planning (DOP) submitted a comment noting that Petitioner must provide for its review building elevations and design information so that it can determine whether the proposed dwelling satisfies the RC-5 zone performance standards.

Testimony and evidence revealed that the subject property is 13,534 square feet (0.31 acres) and is zoned RC- 5. The property is improved with a small dwelling constructed in 1952, and the Petitioner indicated the home is in serious disrepair and has severe mold conditions as well. As such, the petitioner proposes to raze the existing dwelling (shown on the photos marked as Exhibit 2) and construct in its place a new home sized at 65' x 34'. The Petitioner's immediate neighbors attended the hearing, and while they agree the existing dwelling needs to be razed and rebuilt, they oppose the construction of a 34' wide dwelling. They indicated that the proposed 8' side yard setbacks would cause the homes to appear crowded together, and they were also concerned with the possibility of excess storm water runoff with such small setbacks. Both residents also explained that most of the homes in the area are between 28'-30' wide. I believe the concerns expressed by the neighbors are valid and legitimate, and a 30' wide dwelling with 10 ft. setbacks on each side would be consistent with the current pattern of development and would allow for some "elbow room," as noted by Mr. Cargile.

At several points during the hearing, the testimony and discussion tended to focus on the size and positioning on the lot (in terms of how close it would be situated to Galloway Creek) of the proposed dwelling. As Mr. Church noted, the hearing was not one to determine whether building permits should be issued or whether the site plan complied with the county's environmental regulations. Those issues will be carefully reviewed by the respective county

agencies responsible for such matters. But one point concerning the site plan and the size of the proposed dwelling is in order at this juncture.

Specifically, B.C.Z.R. §§104.5 and 104.3 are applicable in this case, given that the existing dwelling is nonconforming and is located within the Critical Area. As such, the ground floor area of the replacement dwelling can only be extended or enlarged by 25%. The existing dwelling (51' x 25') has a ground floor area of 1,275 S.F., and under the above cited regulations the replacement dwelling can be no larger than 1,593.75 S.F. ground floor area. The replacement dwelling shown on the plan (Exhibit 1) is sized at 65' x 34', or 2,210 S.F. ground floor area, which would not be permitted under the B.C.Z.R, although that determination will be left to the County's Department of Permits, Approvals, and Inspections, which is the agency that reviews plans and issues permits for construction.

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).

Petitioner has met this test. The property is zoned RC-5, which imposes stringent setback and lot size requirements. This zoning - - which is somewhat anomalous - - and the waterfront location render the property unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship, since he would be unable to construct the replacement dwelling as designed. 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. Other homes in the area have been rebuilt, and the dwelling proposed by Petitioner would improve the site and be compatible with the neighborhood.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, variance relief shall be granted.

THEREFORE, IT IS ORDERED, this 17th day of December, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed replacement dwelling to have side yard setbacks of 8 ft. each in lieu of the required 50 ft. be and is hereby **DENIED**.

It is further ordered that variance relief pursuant to B.C.Z.R. Section 1A04.3.B.2.b, to permit a replacement dwelling to have side yard setbacks of 10 ft. each in lieu of the required 50 ft. be and is hereby **GRANTED**.

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

1. The Petitioner may apply for any required permits 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. The Petitioner must comply with the ZAC comments received from DEPS, DOP and DPR; copies of which are 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 _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln