

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1824 Wilson Point Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Councilman District		
William J. & Denise Shade	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0247-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by William J. & Denise Shade, the legal owners of the subject property. The Petitioners are requesting Variance relief from Sections 1B02.3.C.1 and 301.1.A of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a rear yard of 18 ft. for a replacement dwelling and a rear yard of 10 ft. for an open covered porch and stairway in lieu of the required 30 ft. and 22.5 ft., respectively.

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 of the requests was William J. & Denise Shade and David Billingsley from Central Drafting & Design, the firm that prepared the site plans. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition. 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 from Department of Environmental Protection and Sustainability (DEPS) dated May 24, 2013 and Development Plans Review (DPR) dated May 13, 2013. Department of Environmental Protection and Sustainability

(DEPS) indicated Petitioners were obliged to comply with the Critical Area regulations while DPR noted that Petitioners must satisfy the county's flood protection regulations.

Testimony and evidence revealed that the subject property is approximately 0.191 acres and is zoned DR 5.5. The property is waterfront and comprises Lots 144 & 145 of the Bull Neck subdivision, recorded in 1925. Exhibit 5. The Petitioners purchased the property in 2007, and would like to raze the existing single family dwelling and construct in its place (in virtually the same "footprint") a new single family dwelling constructed in accordance with modern regulations and standards. 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. As seen on the plan, the lot (though 100' wide) is only 76' deep, which renders the property unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty, given they would be unable to construct a replacement dwelling. As Mr. Billingsley noted, if the B.C.Z.R. setbacks were observed, the Petitioners would be left with a 21' building envelope, which is insufficient. 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. This is demonstrated by the lack of County and/or community opposition.

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

THEREFORE, IT IS ORDERED, this 13th day of June, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a rear yard of 18 ft. for a replacement dwelling and a rear yard of 10 ft. for an open covered porch and stairway in lieu of the required 30 ft. and 22.5 ft., respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from 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.

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