

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(1119 Chester Road)</b>	*	OFFICE OF ADMINISTRATIVE
15th Election District	*	HEARINGS OF
6th Council District	*	BALTIMORE COUNTY
Gast Construction Co., Inc.	*	<b>CASE NO. 2021-0021-A</b>
Legal Owner/Petitioner	*	

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Gast Construction Co., Inc., (the “Petitioner”) for property located at 1119 Chester Road, Middle River (the “Property”). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”), §1B02.3.C1 (DR 3.5) to permit a lot width of 39 ft. in lieu of the minimum required 70 ft., a left and right side yard of 6 ft. in lieu of the minimum required 10 ft. each, and a sum of side yards of 12 ft. in lieu of the minimum required 25 ft.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Charles Gast of Gast Construction Co., Inc. appeared on behalf of the Petitioner along with Geoffrey C. Schultz, professional land surveyor with Polaris Land Consultants who prepared a site plan (the “Site Plan”). (Pet. Ex. 1). Gregory Szoka, Esquire and Stark and Keenan represented the Petitioner.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) which agency did not oppose the requested relief. Additional ZAC comments were provided by the Department of Environmental Protection and Sustainability (“DEPS”) which agency emphasized that the Property is located within the Chesapeake Bay Critical Area (“CBCA”), the Limited Development Area (“LDA”) and a Modified Buffer Area (“MBA”). As

such, the Property will need to meet lot coverage, afforestation and MBA mitigation requirements.

The Property is approximately 02.92 gross acres (12,717 sf) and is waterfront property on Galloway Creek. It was previously improved with a single family home and a detached garage which have been razed. The Property is zoned density residential (DR 3.5). It is served by public water and sewer. The Property was created as Lot 239 which was part of a 1920 Subdivision Plat of Long Beach Estates. (Pet. Ex. 2). The prior home was constructed in 1929. (Pet. Ex. 3). As shown on the aerial photo, the prior home was not centered within the Property boundary lines. (Pet. Ex. 4). The Property narrows as it gets close to the water with the waterfront edge forming a point. (Pet. Exs. 1, 6). Street views photographs accurately depict the now vacant lot. (Pet. Exs. 5A-5D).

Mr. Schultz explained that the proposal here is to construct a modest single family home which will be 26 ft. wide within the same building footprint as the original home. The new home will be smaller than other homes in the area. As a result, the lot width where the proposed home will be built is 39 ft. wide with 6 ft. side yard setbacks. There will not be any construction within the MBA (exceeded by 20 ft).

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

The Property is unique because the original home built in 1929 was not centered within the Property lines. It is also an irregularly shaped Property which narrows as it gets closer to the water. I find that the Petitioner will suffer a practical difficulty and unreasonable hardship because

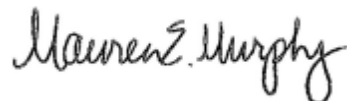
a house cannot be constructed on this waterfront lot without the requested relief. I find the variance can be granted within the spirit and intent of the BCZR and DR 3.5 zone without causing injury to the public health, safety and general welfare, particularly in light of the lack of opposition and all construction will be outside the MBA.

THEREFORE, IT IS ORDERED, this **28th** day of **April 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from BCZR, §1B02.3.C1 (DR 3.5) to permit a lot width of 39 ft. in lieu of the minimum required 70 ft., a left and right side yard of 6 ft. in lieu of the minimum required 10 ft. each, and a sum of side yards of 12 ft. in lieu of the minimum required 25 ft. is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Prior to the issuance of Permits, the Petitioner shall comply with the DEPS ZAC Comment which is incorporated herein.

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



MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm