

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(1211 Engleberth Road)		
15th Election District	*	OFFICE OF ADMINISTRATIVE
7 th Council District		
Robert Scott	*	HEARINGS FOR
Legal Owner		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2020-0208-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by Robert Scott for property located at 1211 Engleberth Road. The Petitioner is requesting variance relief from Baltimore County Zoning Regulations (“BCZR”) § 1A04.3.B.2.b. for a principal building side yard setback of 15.4 ft. and 17.8 ft. in lieu of the required 50 ft., and a principal front yard setback of 48 ft. to the centerline of the road in lieu of the required 75 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. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

The property is located within the Chesapeake Bay Critical Area (“CBCA”) and is subject to Critical Area requirements as noted in the ZAC comment dated September 1, 2020 submitted by the Department of Environmental Protection and Sustainability (“DEPS”). A comment was also received from the Department of Planning (“DOP”) dated August 31, 2020. Neither agency opposed the requested relief, subject to proposed conditions, which will be incorporated into the Order.

Petitioner, Robert Scott, appeared in support of the requested variances. The subject property is approximately 11,929 sq. ft. and is zoned RC 5. The lot is within a waterfront

subdivision on a plat recorded in 1925. As noted by the DOP, the petitioner's proposed residence, and the requested variance setbacks are compatible with the surrounding residences and lots. Mr. Scott explained that he and his wife plan to raze the existing residential structure and two story garage. He acknowledged that the lot lies within the Chesapeake Bay Critical Area (CBCA) and that the proposed construction is subject to all the CBCA regulations. He testified that the proposed new residence will be set back farther from the water than the existing residence, and that the impervious surface area will be reduced.

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 site is an irregular trapezoid shape with water frontage. The lot was created in 1925, well before the BCZR. It is therefore unique. The Petitioner will suffer practical difficulty and hardship if the variance relief is denied because he would be unable to build the proposed residence. Based on the record evidence I find that the variance relief can be granted within the spirit and intent of the BCZR and without harming the public health, safety, or welfare, especially since the Petitioner will be required to comply with the ZAC comments of the DEPS and DOP.

THEREFORE, IT IS ORDERED, this 6th day of **January 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from § 1A04.3.B.2.b. for a principal building side yard setbacks of 15.4 ft. and 17.8 ft. in lieu of the required 50 ft., and a principal front yard setback of 48 ft. to the centerline of the road in lieu of the required 75 ft. is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is 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, Petitioner would Any appeal of this decision must be made within thirty (30) days of the date of this Order.
- Petitioner must comply with DOP and DEPS comments, copies of which are attached hereto and make a part thereof.

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

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm