

IN RE: PETITION FOR VARIANCE
(3500 A Galloway Road)
15th Election District
6th Council District
Patrick & Linda Kerr

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BEFORE THE
OFFICE OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY

Legal Owners

Petitioners

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CASE NO. 2020-0172-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by Patrick and Linda Kerr (the “Petitioners”) for property located at 3500 A Galloway Road in the Bowleys Quarters area of Baltimore County on Galloway Creek (the “Property”). The Petitioners are requesting variance relief from Baltimore County Zoning Regulations (“BCZR”) § 1A04.3.A to allow a building height of 38 ft. in lieu of the allowed 35 ft. and from § 1A04.3.B.2.b to allow side yard setbacks of 10 ft. in lieu of the required 50 ft. A new home will be constructed on the Property.

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. (Pet. Ex. 1).

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) which recommended that, because the Property is located within the Chesapeake Bay Critical Area (“CBCA”), the Site Plan would be reviewed by DEPS for compliance with the Limited Development Area (“LDA”) and Modified Buffer Area (“MBA”) requirements of the CBCA before a building permit will be issued. In

another ZAC Comment, the Department of Planning (“DOP”) stated that it did not oppose the requested relief, subject to certain conditions as set forth therein.

Thomas J. Hoff, a registered landscape architect, appeared on behalf of the Petitioners and prepared the Site Plan. Petitioner Patrick Kerr, who resides next to the Property at 3500 Galloway Rd., was also present. Carolyn Kehl, an adjacent neighbor at 1007 Cold Spring Rd., testified in opposition.

The Property is 26,820 sq. ft. (0.616 ac +/-) and is zoned RC5 (rural-residential). Photographs of the Property were accepted (Pet. Exs. 3, 4 and 5). Mr. Hoff described the Property as a vacant, waterfront lot which was created as part of a subdivision in or around 1920. The Property measures 50 ft. wide (between the Kerr residence and Cold Spring Rd.) and 400 ft. in length (between Galloway Rd. and the water).

Mr. Hoff acknowledged that the Property is a waterfront lot, it is subject to the CBCA requirements which require a 100 ft. buffer area/setback from the water as depicted on the Site Plan. The waterfront or western boundary of the Property is wider (73.5 ft.) than the eastern boundary along Galloway Rd. (50 ft.). Thus, the Property is irregularly shaped as compared to other properties in the area; it is not a perfect rectangle.

Side yard setbacks of 10 ft. are needed to build a 40 ft. by 38 ft. house in lieu of the required setback of 50 ft. In addition, because the width of the proposed house is restricted by the width of the Property, variance relief is also needed to increase the height of the house by 3 ft. from 35 ft. height to 38 ft. Mr. Hoff testified that the proposed driveway would be accessed from Cold Spring Rd. rather than from Galloway Rd. to reduce the amount of impervious surface.

Mr. Hoff concluded that if the requested variances were denied, the Petitioners would not be able to build a house on the Property which would cause a practical difficulty and unreasonable

hardship to them.

Carolyn Kehl owns property on the southern side of Cold Spring Rd. at 1007 Cold Spring Rd. Ms. Kehl testified that she would prefer that the proposed driveway be accessed off Galloway Rd. due to the narrow width of Cold Spring Rd. She would also prefer that the 6 existing trees on the Property remain. Finally, she wanted the proposed house to be restricted to the dimensions shown on the Site Plan.

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).

As described above, the Property is unique due to its unequal dimensions and irregular shape as compared to other properties in the subdivision. As a result, if strict compliance with the height and side yard setbacks were required, in combination with the CBCA requirements, the Petitioners would suffer practical difficulty and unreasonable hardship, thus preventing them from constructing a house on the Property. *Trinity Assembly of God v. People's Counsel* 407 MD 53, 79-84 (2008).

THEREFORE, IT IS ORDERED, this **18th** day of **November 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations ("BCZR") § 1A04.3.A to allow a building height of 38 ft. in lieu of the allowed 35 ft. and from BCZR §§ 1A04.3.B.2.b to allow both side yard setbacks of 10 ft. in lieu of the required 50 ft. and 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, 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 be required to return the subject property to its original condition.
2. Petitioners must comply with the DOP and DEPS ZAC comments, 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 _____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm