

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(Seneca Road)		
15th Election District	*	OFFICE OF ADMINISTRATIVE
6th Council District		
Thomas M. Phillips and	*	HEARINGS FOR
Shirley M. Phillips		
		BALTIMORE COUNTY
<i>Legal Owners</i>	*	
Petitioners	*	CASE NO. 2020-0176-A
* * * * *		* * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by Thomas and Shirley Phillips for property located on Seneca Road in Bowley’s Quarters. The Petitioners are requesting variance relief to allow a 2-story dwelling with a lot size of 1.35 acre in lieu of the required 1.50 acre per Baltimore County Zoning Regulations (“BCZR”) § 1A04.3B.1.a.

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.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) which indicates that the subject property is located with the Chesapeake Bay Critical Area (“CBCA”). A ZAC comment was also received from the Department of Planning (“DOP”) which did not oppose the requested relief subject to proposed conditions, which will be incorporated into the Order.

William N. Bafitis, the professional engineer who prepared the site plan, appeared in support of the requested relief. Two of the neighboring property owners also attended for

informational purposes.

The subject property is approximately 1,353 acres and is zoned RC 5. It is located in the Bowley's Quarters community and is part of a plat recorded in 1921, prior to the adoption of the BCZR. It is also located within the Chesapeake Bay Critical Area (CBCA) and subject to those regulations.

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 subject lot is unique in that it is a triangular shape and is fronted by two public streets: Chestnut Road and Seneca Road. Further, as noted above, it is in the CBCA. The Petitioner will suffer practical difficulty and hardship if the variance relief is denied because they will be unable to construct the proposed residence. I find that the variance can be granted within the spirit and intent of the BCZR and without harming the public health, safety, or welfare. As Mr. Bafitis pointed out, all setbacks will be met. Further, an area variance was granted for the property across the street that is only .08 acres, whereas the subject property is 1.35 acres. Finally, the site plan acknowledges that all CBCA regulations must be complied with and petitioner is aware that they must also meet the RC-5 performance standards.

THEREFORE, IT IS ORDERED, this **17th** day of **November 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to allow a 2-story dwelling with a lot size of 1.35 acre in lieu of the required 1.50 acre per Baltimore County Zoning Regulations ("BCZR") § 1A04.3B.1.a. and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners 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.
- Petitioners must comply with the DOP and DEPS ZAC comments, copies of which are attached hereto and make a party 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