

IN RE: PETITION FOR VARIANCE
(9106 Hinton Avenue)
15th Election District
7th Council District
William & Judith A. Kurek
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2020-0066-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County for consideration of a Petition for Variance filed by the legal owners of the subject property, William and Judith A. Kurek (“Petitioners”). The Petitioners are requesting Variance relief pursuant to Baltimore County Zoning Regulations (“BZCR”) § 1B02.3.C1 to permit an existing dwelling on a lot of record 50 ft. wide in lieu of the required 55 ft. A site plan was marked as Petitioners’ Exhibit 1.

Due to the COVID-19 pandemic, a WebEx hearing was conducted remotely by computer and/or phone participation. Petitioner William Kurek, appeared in support of the requested relief. David Billingsley appeared on behalf of the Petitioner. There were no protestants in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) dated April 3, 2020 and a comment was received from the Department of Environmental Protection Sustainability (“DEPS”) dated April 24, 2020.

The site is approximately 8,225 Sq. ft and zoned DR 5.5. Mr. Kurek testified that his parents bought adjoining lots 44 and 45 of the Swan Point development in the 1970s and that they gifted it to him in 1988. The Swan Point plat was recorded in 1928. All the original lots

were 50 ft. wide, as was permitted at the time. Aerial photos (Petitioners' Exhibits 5, 6, and 7) show that most of the residences in the area are on these single 50 ft. lots, although there are a few on 100 ft. double lots. Mr. Kurek testified that when his parents bought the property there was a residence on Lot 44. After acquiring the property from his parents Mr. Kurek and his wife constructed the existing residence on Lot 45 and razed the original residence. Mr. Kurek explained that they now wish to build a new residence on Lot 44 and then sell both homes, and retire to a residence they own in Florida. Petitioners therefore request a variance from the 55 ft. minimum width requirement in this DR 5.5 zone. Mr. Billingsley testified that the existing home meets all Chesapeake Critical Area and Limited Density Area requirements, as per the DEPS comments.

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 property is unique in that the Swan Point development was laid out long before the current DR 5.5 zoning was applied to it. I further find that strict application of the 55 ft. width requirement would result in practical difficulty and unwarranted hardship for the Petitioners. To wit, they would not be able to construct the residence on the adjoining lot while meeting the 55 ft. width requirements for both lots. Further, no increase in residential density beyond that otherwise allowed by the BCZR will occur as a result of granting this variance because both lots meet the minimum lot size regulations. In addition, the height and side yard setback regulations will be complied with. Finally, I find that the variance can be granted within

the spirit and intent of the BCZR and without causing harm to the public health, safety and welfare. The proposed development of these adjoining 50 ft. parcels is typical of that in the neighborhood and therefore compatible.

THEREFORE, IT IS ORDERED, this 1st day of **September, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief, from BCZR § 1B02.3.C1 to permit an existing dwelling on a lot of record 50 ft. wide in lieu of the required 55 ft. be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for their appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at his 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 _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm