

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(17310 Big Falls Road)		
7th Election District	*	OFFICE OF ADMINISTRATIVE
3rd Council District		
DRL, LLC	*	HEARINGS OF
Legal Owner	*	BALTIMORE COUNTY
Petitioner	*	CASE NO: 2021-0115-A
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by DRL, LLC (the “Petitioner”) for property located at 17310 Big Falls Road, Monkton (the “Property”). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) §1A04.3.B.2.b to permit a proposed dwelling with: (a) side yard setbacks of 10 feet in lieu of the required 50 ft. and (b) an 80 ft. building setback from the center line of a collector road (Big Falls Road) in lieu of the required 150 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. David R. Lombardo, the sole member of the Petitioner, appeared in support of the Petition along with James Matis, PE of Matis, Warfield, Inc., consulting engineers who prepared a site plan (the “Site Plan”). (Pet. Ex. 2). Michael T. Wyatt, Esquire of Wyatt and Gunning, LLC, presented the Petitioner at the hearing. Eric Bodendorfer, the adjacent property owner of 17304 Big Falls Rd. testified in opposition. After the hearing, Mr. Bodendorfer sent an email to OAH dated June 24, 2021 indicating that he was no longer opposing the variance relief.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), the Department of Environmental Protection and Sustainability (“DEPS”), and

Development Plans Review (“DPR”) which agencies did not oppose the requested relief.

The Property is unimproved measuring 2.02 acres +/- (88,043 sf) and is zoned Rural Residential (RC 5). As reflected on the Site Plan, it is an elongated, narrow parcel which fronts onto Big Falls Rd. and has a forest buffer, woodlands, trees, wetlands and slopes greater than 25% in the rear. (Pet. Ex. 2). The width of the Property measures 84.25 ft. A two-story dwelling and attached garage are proposed to be built in the front with a septic reserve area of 5,000 sf +/- behind the house. (Pet. Ex. 3, 4). A well is proposed to be located in the front yard. (*Id.*).

The Petitioner is in the contracting business located on nearby Mt. Carmel Rd. and built a deck onto the adjacent home. On either side of the Property, and along Big Falls Rd., are existing single family homes largely built in the 1930s. (Pet. Ex. 4). The Petitioner acquired the Property in 2019.

Mr. Matis, who was accepted as an expert in civil engineering, land use and zoning, explained that a well can be dug at depths between 100-2000 ft. in Baltimore County. Mr. Matis also testified that DEPS approved the septic reserve area earlier this year. He researched the zoning history of the Property and found that none existed. The Property was created as a lot of record in 1923, long before the BCZR were enacted. To prepare the Site Plan, he used a survey and GIS information.

Mr. Matis also testified that in the RC5 zone, the 50 ft. side yard setback required for a dwelling could never be met here given that the width of the lot is 84.25 ft. For the proposed home, variance relief for 10 ft. setbacks on both side yard are needed. Additionally, he opined that it would not be possible to meet the 150 ft. setback from the centerline of Big Falls Rd. (a collector road under the BCZR definition §1A04.3.B.2) to the proposed home, particularly given the septic reserve area in the rear of the home. He added that rock was also found behind the proposed home

location which required the septic reserve area to be located further toward the rear of the Property, and pushed the proposed building envelope within the 150 ft front setback. Mr. Matis also opined that the proposed home location will not adversely impact the wooded area or environmental features in the rear. The front of the Property is cleared of trees.

Mr. Matis answered questions asked by Mr. Bodendorfer in regard to the well depth and location. He also explained that the aerial photograph shows 25 ft. circles measured from the septic reserve area to account for rock discovered there. Mr. Matis opined that given all the characteristics of the Property previously mentioned, it was unique. In addition, the Property is larger than other properties in the neighborhood which properties measure ½ to 1 ½ acres. He stated that the Petitioner would suffer an unreasonable hardship if the RC5 setbacks had to be met because a home could not be built.

Mr. Bodendorfer offered photographs which were admitted into evidence and are contained in the file. In Case No. 2011-0246-A, Mr. Bodendorfer was granted variance relief to permit an accessory structure (shed/workshop) with a height of 22 ft. in lieu of 15 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 due to its narrow and elongated shape along with rock in the middle and environmental features in the rear. I find that the creation of this lot prior to BCZR and unique features as testified to by Mr. Matis, creates a practical difficulty and unreasonable hardship in that a single family home could not be constructed on the Property. Other than the DEPS Comment

that Ground Water Management will have to do the full review regarding the well and septic prior to the issuance of a building permit, and the DOP Comment that the RC5 Performance Standards have to be met, the County agencies were not opposed to the requested relief. I find that the Petitioner would suffer a practical difficulty and unreasonable hardship if the proposed setbacks were not granted because a home could be constructed on a lot created prior to the enactment of the BCZR. I also find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED, this 19th day of **July 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §1A04.3.B.2b to permit a proposed dwelling with: (a) side yard setbacks of 10 feet in lieu of the required 50 feet. (b) An 80 foot building setback from the center line of a collector road (Big Falls Road) in lieu of the required 150 feet be, and they are 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. Petitioner must comply with the DEPS and DOP ZAC 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.



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm