

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(1312 Burke Road)		
15th Election District	*	OFFICE OF ADMINISTRATIVE
6th Council District		
John & Diana Bongiorno	*	HEARINGS OF
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Samantha Bongiorno and Charles Tarr	*	Case No: 2021-0169-A
<i>Contract Purchasers</i>		

Petitioners *

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by John and Diana Bongiorno, Legal Owners and Samantha Bogiorno and Charles Tarr, Contract Purchasers, Petitioners for property located at 1312 Burke Road. The Petitioners are requesting variance relief from Baltimore County Zoning Regulations (“BCZR”) § 1A04.3.A to allow a proposed dwelling on a lot zoned RC5 to construct a dwelling with a height of 45 ft. in lieu of the permitted 35 ft. From BCZR § 1A04.3.B.1.a to allow a proposed dwelling on a lot zoned RC5 with a lot size of 0.329 acres in lieu of the required 1.5 acres. From BCZR § 1A04.3.B.2.b to allow a proposed dwelling on a lot zoned RC5 with a street center-line setback of 45 ft. in lieu of the required 100 ft., to allow a rear yard variance of 30 ft. to the property line in lieu of 50 ft., to allow a side yard setbacks of 9 and 10 ft. in lieu of the required 50 ft. and for such other and further relief as the nature of this cause may require.

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 2.

Samantha Bongiorno appeared at the hearing in support of the requested relief. Timothy

Kotroco, Esq., represented the Petitioners. There were no opposing parties or interested citizens. In fact, Petitioners submitted a petition in support of the requested variances signed by all the surrounding neighbors. (Petitioners' Exhibit 4). Substantive Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP") and the Department of Environmental Protection and Sustainability ("DEPS"), they did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order. Mr. Kotroco explained that the subject property is approximately 14,317 sq. feet or .329 acres and is zoned RC 5. There was previously a dwelling on the property which was destroyed by hurricane Isabelle. Petitioners intend to construct a new dwelling in approximately the footprint of the previous dwelling. The adjoining lots on both sides of the subject property are owned by Petitioner John Bongiorno and his brother Victor Bongiorno.

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 unique in that it is a long, narrow, wedge-shaped waterfront lot on a plat that pre-dates the overlay of the RC 5 zone. Petitioners would suffer practical difficulty and hardship if the variance relief were denied because they would be unable to construct any dwelling on the site. I find that this is a buildable lot within the spirit and intent of the BCZR and that the variance relief will not cause harm to the public health, safety or welfare. The subject lot is actually larger than the average lot in this subdivision and the conditions imposed by DEPS will ensure that the environmental concerns are addressed.

THEREFORE, IT IS ORDERED, this 27th day of **July 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR § 1A04.3.A to allow a proposed dwelling on a lot zoned RC5 with a height of 45 ft. in lieu of the permitted 35 ft. From BCZR § 1A04.3.B.1.a to allow a proposed dwelling on a lot zoned RC5 with a lot size of 0.329 acres in lieu of the required 1.5 acres. From BCZR § 1A04.3.B.2.b to allow a proposed dwelling on a lot zoned RC5 with a street center-line setback of 45 ft. in lieu of the required 100 ft., to allow a rear yard variance of 30 ft. to the property line in lieu of 50 ft., to allow a side yard setbacks of 9 and 10 ft. in lieu of the required 50 ft. and for such other and further relief as the nature of this cause may require. is hereby GRANTED, and it further

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 DEPS ZAC comments, a copy of which is attached hereto and made 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