

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(1117 Cold Spring Road)	*	OFFICE OF ADMINISTRATIVE
15th Election District	*	HEARINGS OF
5th Council District	*	BALTIMORE COUNTY
Ronald Hogg & Linda Ware	*	CASE NO: 2021-0128-A
Legal Owners	*	
Petitioners	*	
* * * * *		

AMENDED OPINION AND ORDER¹

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Ronald Hogg and Linda Ware for property located at 1117 Cold Spring Road. The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) §§ 1A04.3.B.2.b and 301.1A to approve, respectively, a deck on the front of the house (water side) with side setbacks of 10’ 6” and 5 ft. in lieu of the required 50 ft. setbacks, and to allow a 37.5 ft. open projection, which exceeds the 25% maximum yard depth.

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.

A Substantive Zoning Advisory Committee (“ZAC”) comment was 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”), they did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order.

The Petitioners, Ronald Hogg and Linda Ware appeared at the hearing. They were

¹ The original Order is amended in order to state the exact and proper measurement of one of the setbacks.

represented by Timothy Kotroco, Esquire. Francis Maher, one of the adjoining property owners also participated at the hearing. He was represented by Jeffrey H. Gray, Esquire.

The subject property is approximately 13,280 sq. ft., and is zoned RC 5. It is a waterfront lot that is an irregular long, narrow, trapezoid shape. A site plan was admitted as Petitioner's Exhibit 6. Mr. Kotroco explained that the current RC 5 zoning was overlaid on this older development long after the original homes were built. Under the current RC 5 setbacks the dwelling itself would not even be permitted. He further explained that similar variance relief has been granted throughout the neighborhood and in many of the older waterfront communities in the eastern part of the county. Mr. Gray explained that his client, Mr. Maher, has also recently filed a similar variance request for the deck on the water side of his neighboring property, and that he does not oppose the variances requested in this case. A site plan of Mr. Maher's proposed deck was admitted as Petitioner's Exhibit 7.

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 site is unique within the meaning of the law. If the variances were denied the Petitioners would suffer practical difficulty and hardship because they would not be able to construct the proposed deck. I find that the variances can be granted within the spirit and intent of the BCZR, and that the relief will not harm the public health, safety or welfare.

THEREFORE, IT IS ORDERED, this 17th day of **November, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §§ 1A04.3.B.2.b

and 301.1A to approve a deck on the front of the house (water side) with side setbacks of 10 ft. 6 inches and 5 ft. in lieu of the required 50 ft. setbacks and 37.5 ft. open projection respectively, are 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 DEPS ZAC comment, 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