

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(915 Frog Mortar Rd.)</b>	*	
15 <sup>th</sup> Election District	*	OFFICE OF ADMINISTRATIVE
6 <sup>th</sup> Council District	*	HEARINGS OF
Robert J. Andryszak	*	
Legal Owner	*	BALTIMORE COUNTY
<b>Petitioner</b>	*	<b>CASE NO: 2021-0218-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by the Petitioner, Robert J. Andryszak (“Petitioner”) for property located at 915 Frog Mortar Rd., Middle River (the “Property”). Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (“BCZR”), §1B02.3.C.1 to approve an 8 ft. side yard setback in lieu of the minimum required 10 ft. and with a sum of 20 ft. in lieu of the required 25 ft. total for both sides.

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. Petitioner appeared *pro se* at the hearing in support of the Petition. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 3 (the “Site Plan”). There were no Protestants or interested citizens that appeared at the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) and Department of Planning (“DOP”) which agencies did not oppose the requested relief.

The Property is approximately 8,600 sf and was created as Lot 72 on the Plat of Revolea Beach in Plat Book WPC No. 5, folio 67. (Pet. Exs. 4, 5). It was previously improved with a 960 sf, 1-story home which has been razed. (Pet. Ex. 3, 6). The former home fronted on and was

parallel to Frog Mortar Rd. The Property is also improved with a 70 sf metal shed as well as a 512 sf shed. It is irregularly shaped in that the western Property line along Frog Mortar Rd. measures 50.50 ft. but the rear (eastern) Property line measures 50 ft. Additionally, the northern Property line measures 175.45 ft., and the southern Property line measures 170.04 ft. It is served by public water and sewer but a grinder pump is located in the front yard. (Pet. Ex. 3).

The Property is zoned Density Residential (DR 3.5). The Property is located within the Limited Development Area (“LDA”) in the Chesapeake Bay Critical Area (“CBCA”) and is therefore subject to CBCA requirements as noted in the DEPS ZAC comment dated August 13, 2021. To the north of the Property is a 50 ft. CBCA easement (unimproved) and is separated from the Property by a 3 ft. 6 in chain link fence. To the south is a home located at 917 Frog Mortar Rd. which is separated from the Property by a 6 ft. wooden fence.

When the Petition was filed, Petitioner proposed to construct a 1-story, 1,500 sf replacement dwelling which would be setback 17.76 ft. from Frog Mortar Rd. with a northern side yard setback of 12 ft. and a southern side yard setback of 8 ft. Petitioner explained that the northern 12 ft. setback is needed to construct a driveway. Petitioner stated that the owner of 917 Frog Mortar Rd., Catherine Porcello, does not object to the proposed southern setback.

In considering the DEPS ZAC comment dated August 13, 2021 which indicated that the proposed lot coverage as reflected on the Site Plan exceeds the allowable CBCA lot coverage, it was suggested that the Petitioner file an Amended Site Plan and have it reviewed and approved by DEPS. Petitioner amended the Site Plan which confirms that the proposed home will now be 1,344 sf with a rear yard deck 70 sf, a porch in the front, and a porch on the southern side (the “Amended Site Plan”). (Pet. Ex. 13, 14). Importantly, the proposed home will now be set back 30 ft. from Frog Mortar Rd. so that it is set evenly with the newer homes along Frog Mortar Rd. With the

reduced square footage of the proposed home, the northern side yard setback would remain at 12 ft. but the southern setback will now be increased to 10 ft. The 70 sf metal shed and 63 sf wooden deck will be removed. The 512 sf shed and existing 136 sf attached, open-sided pavilion will remain. (*Id.*). DEPS approved the proposed lot coverage of 2,599 sf. (Pet. Ex. 12).

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 in that it is irregularly shaped as indicated above. The Amended Site Plan now reflects a replacement dwelling which is setback more evenly with the newer homes along Frog Mortar Rd. Further, the additional 2 ft. setback along the southern boundary line now provides more separation between the proposed home and the home at 917 Frog Mortar Rd. I note that the Amended Site Plan does not reflect a proposed, 12 ft. wide, paved driveway, which if constructed, may alter the DEPS approved lot coverage. As such, the Amended Site Plan will be incorporated into and made a part of this Order. The Petition for Variance relief will also be amended to include relief from the minimum required lot size of 10,000 sf; the minimum lot width of 70 ft.; and minimum sum of side yard setbacks of 22 ft. in lieu of the required 25 ft. With the Amended Site Plan, the proposed home now meets the minimum front and rear setbacks as well as the minimum width of individual side yard of 10 ft. for the DR 3.5 zone.

Based on the foregoing, I find that the Petitioner would suffer a practical difficulty and unreasonable hardship if the proposed setbacks were not granted because he would not be able to construct a modest sized, 1-story, replacement dwelling which he plans to live in during his retirement and will be handicap accessible. 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 23<sup>rd</sup> day of **November, 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §1B02.3.C.1 to approve a replacement dwelling with:

- 1) a minimum lot size of 8,600 sf in lieu of the required lot 10,000 sf;
- 2) a minimum lot width of 50 ft. in lieu of the required 70 ft.; and
- 3) a minimum sum of side yard setbacks of 22 ft. in lieu of the required 25 ft.

be, and they are each 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. The Petitioner shall comply with the DEPS ZAC comment, dated August 13, 2021, and the DEPS letter of approval dated November 19, 2021 (Pet. Ex. 12), copies of which are attached hereto and made a part hereof.
3. The Amended Site Plan (Pet. Exs. 13 and 14) shall be incorporated into and made a part of this Order.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed

MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm