

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(2510 Holly Beach Road)		
15 th Election District	*	OFFICE OF ADMINISTRATIVE
7th Council District		
Michael and Shelly McKew	*	HEARINGS OF
Legal Owners	*	BALTIMORE COUNTY
Petitioners	*	CASE NO: 2021-0217-A

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by the Petitioners, Michael and Shelly McKew (“Petitioner”) for the property located at 2510 Holly Beach Road, Middle River (the “Property”). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”), §§1A04.3.B.2.b and 1A04.3.B.3 to: (1) permit a replacement dwelling with side yard setbacks of 10 ft. in lieu of the required 50 ft.; (2) allow 31.25% lot coverage in lieu of the maximum permitted coverage of 15%; and (3) allow a lot size of 0.0224 acres +/- in lieu of the minimum lot size of 1.5 acres.

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 Michael McKew appeared at the hearing in support of the Petition along with Bernadette Moskunas of Site Rite Surveyors, the surveying company who prepared a site plan (the “Site Plan”). (Pet. Ex. 5). There were no Protestants or interested citizens that appeared at the hearing. However, the adjacent property owners of 2508 Holly Beach Rd. and 2512 Holly Beach Rd. provided letters of support. (Pet. Exs. 7, 8).

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

Petitioners needed to satisfy the requirements of BCZR, §304.1. However, Petitioners are not seeking relief under that Section for an undersized lot and would not be able to satisfy BCZR, §304.1.B. in any event because variance relief is needed for this RC5 lot.

The Property is approximately 0.2238 acres +/- (9,750 sf +/-) and is zoned Rural, Residential (RC5). It was created as Lot 9 on the Plat of Holly Beach (Plat W.P.C. 4/182) in or around 1913. It is irregularly shaped, different from other lots on either side of it as shown on the Site Plan. (Pet. Ex. 5). It is 55.77ft wide along Holly Beach Rd. and 50 ft wide on the waterfront side. It is improved with an existing 1-story home measuring approximately 1,331 sf +/- . A 576 sf garage is located along Holly Beach Rd. At the waterfront is a covered outdoor area above a concrete pad measuring 484 sf (which is planned to be removed) along with walkways, steps and wood pier.

Petitioners propose to raze the existing home and replace it with a 1,590 sf home which will be set back toward Holly Beach Rd. The proposed home will have a larger footprint than the existing home and therefore will need 10 ft. side yard setbacks. Given that it is less than 1 acre, it will need variance relief from the minimum lot size of 1.5 acres. Finally, because the footprint of the proposed home is expanding (1,590 sf), and the existing garage (576 sf) will remain, the buildings will cover 22% (2,166 sf) of this lot. As a result, variance relief is needed.

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 irregular shape and size. I find that the Petitioners would suffer a practical difficulty and unreasonable hardship if the proposed side yard setbacks, lot coverage and minimum lot size for the RC5 zone had to be strictly followed because this lot was created prior to the enactment of the RC5 regulations and the Petitioners would not be able to construct a modest size replacement dwelling on this waterfront lot. 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 support of both adjacent neighbors.

THEREFORE, IT IS ORDERED, this 12th day of **October 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §§1A04.3.B.2.b and 1A04.3.B.3 to: (1) permit a replacement dwelling with side yard setbacks of 10 ft in lieu of the required 50 ft; (2) allow lot coverage of 22% in lieu of the maximum permitted coverage of 15%; and (3) allow a lot size of 0.02238acres in lieu of the minimum lot size of 1.5 acres be, and they are hereby, **GRANTED**.

The relief granted herein shall be subject to the following:

1. 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.
2. Petitioners must comply with the DOP and DEPS ZAC comments, copies of which are 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

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County