

IN RE: PETITION FOR VARIANCE

(901 Oakdene Road)

15th Election District

6th Council District

Joseph Myers, Jr.

Legal Owner

Petitioner

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BEFORE THE

OFFICE OF ADMINISTRATIVE

HEARINGS OF

BALTIMORE COUNTY

Case No: 2021-0179-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Joseph Myers, Jr., Petitioner (“Petitioner”) for property located at 901 Oakdene Road, Bowleys Quarters (the “Property”). The Petitioner is requesting variance relief from Baltimore County Zoning Regulations (“BCZR”) §§ 1A04.3.B.2.b, 1A04.3.B.1.a, and 1A04.3.b.3 to permit a side yard setback of 9.8 ft. in lieu of the required 50 ft., a lot area of 0.317 acres in lieu of the required 1.5 acres, and a lot coverage of 25% in lieu of the maximum permitted 15% coverage.

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. Bonita Myers, wife of the Petitioner, appeared at the hearing in support of the requested relief along with her daughter, Jess Myers. Jon Skarda of Shoreline Construction, spoke on behalf of the Petitioner. A Site Plan was prepared and sealed by Site Rite Surveying, Inc. (the “Site Plan”). (Pet. Ex. 1). There were no opposing parties or interested citizens.

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.

Mr. Skarda explained that the Property is approximately 0.317 ac +/- (13,800 sf.) and is waterfront Property on Galloway Creek in Bowleys Quarters. It is zoned Rural Residential (RC5). The Property is long and narrow; 49.59 ft. wide by 276.50 ft. long. It is currently improved with a 2-story frame dwelling built in or around 1919 as reflected on the Site Plan. (Pet. Ex. 1). Petitioner seeks to construct a 35 ft. tall replacement dwelling on the Property with a smaller footprint than the existing dwelling and set further away from the waterfront. There will be a 2-car garage underneath the proposed dwelling.

As waterfront Property, it is located within a Limited Development Area (“LDA”) and a Modified Buffer Area (“MBA”) and is subject to Chesapeake Bay Critical Area (“CBCA”) requirements. The Site Plan reflects that proposed replacement dwelling will be less than the required LDA lot coverage limit. However, due to its shape and size, it will not meet the lot area, building setbacks, or lot coverage required for the RC5 zones as set forth in BCZR, §1A04.3.

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’s long and narrow shape make it unique. Because of its peculiar shape and size, I find that strict compliance with the RC5 area, building setbacks and lot coverage requirements would cause Petitioner to suffer a practical difficulty and unreasonable hardship in not being able to construct a replacement dwelling on this waterfront lot. The replacement dwelling will have a smaller footprint than the existing house while still meeting the RC5 height limit. The lot is less than 50 ft. wide in total and only 0.317 acres. As a result, it could never meet

the 50 ft. side yard setbacks, minimum 1.5 acreage requirement, or 15 % lot coverage restriction. The home was constructed in 1919, long before the RC5 zoning regulations were enacted. 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 17th day of **September 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §§ 1A04.3.B.2.b, 1A04.3.B.1.a, and 1A04.3.b.3 to permit a side yard setback of 9.8 ft. in lieu of the required 50 ft., a lot area of 0.317 acres in lieu of the required 1.5 acres, and a lot coverage of 25% in lieu of the maximum permitted 15% coverage is 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 DEPS and DPR 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.



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm