

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(400 Marlyn Avenue)		
13 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Don Irwin & Scott Dawson	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2017-0171-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Don Irwin and Scott Dawson, owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R) to permit an existing two apartment dwelling to have a side street setback of 7.6 ft. and a combined side yard sum setback of 31.9 ft. in lieu of the required 25 ft. and 40 ft., respectively. A site plan was marked as Petitioners’ Exhibit 1.

Don Irwin appeared in support of the petition. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the reviewing County agencies.

The property is approximately 15,000 square feet and is split-zoned RO & D.R. 5.5. The property is improved with a duplex-style dwelling known as 400 & 400A Marlyn Avenue. Petitioners attempted to obtain an electrical permit from the County and were informed they would need a side yard variance so the property would comply with the dimensional requirements of B.C.Z.R. §§ 402.1 pertaining to duplex and semi-detached dwellings.

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).

Petitioners have met this test. The property is split-zoned and is situated among a mix of commercial and residential uses. As such it is unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to obtain the necessary permits and approvals to complete certain improvements to the property. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the lack of community and/or Baltimore County opposition.

THEREFORE, IT IS ORDERED, this 24<sup>th</sup> day of **February, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit an existing two apartment dwelling to have a side street setback of 7.6 ft. and a combined side yard sum setback of 31.9 ft. in lieu of the required 25 ft. and 40 ft., respectively, be and 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.

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

\_\_\_\_Signed\_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln