

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2909 Ritchie Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
James W. & Carol Ann McBride	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2017-0270-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by James W. and Carol Ann McBride, owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from §1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R) to permit a side yard setback of 5 ft. in lieu of the required 10 ft. for a one story addition to an existing dwelling and a 10 ft. rear yard in lieu of the required 30 ft. for an existing attached garage. A site plan was marked as Petitioners’ Exhibit 1.

Owners James and Carol Ann McBride and David Billingsley, whose firm prepared the site plan, appeared in support of the petition. Several neighbors attended the hearing and opposed the request. 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 site is approximately 13,200 sq. ft. in size and zoned DR 5.5. The property is improved with a single-family dwelling situated on Lot Nos. 34-37 as shown on the plat of Cedarcrest, recorded in 1939. Petitioners have three severely disabled children, and the proposed addition would provide much needed storage space for wheelchairs and other medical supplies needed to

care for the children on a daily basis.

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 shown on an aerial photo submitted as Exhibit 6, most of the homes in the immediate vicinity are constructed on two or three individual lots, while the subject property is comprised of four contiguous lots. As such I believe the size of the property is somewhat unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct the proposed addition.

Finally, I find that the variances 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. Petitioners' neighbors object to the side yard variance request, and contend the addition would be too close to their home at 2907 Ritchie Avenue. However, based on the aerial photograph it appears several of the dwellings in the community have similar side yard setbacks. In addition, Mr. Billingsley indicated the addition would be constructed with fire-rated materials, and I do not believe granting the variance would jeopardize the health or safety of the community.

In granting the request I am cognizant of the fact that variances should be granted "sparingly" since it is "an authorization for [that] ...which is prohibited by a zoning ordinance." *Cromwell*, 102 Md. App. at 699. Even so, the proposed addition (for which a variance is required) is designed to meet the needs of severely disabled children who would no doubt qualify as "disabled" under the Americans with Disabilities Act (ADA). The "administration of zoning laws"

is covered by Title II of the ADA, *Start, Inc. v. Baltimore County*, 295 F. Supp. 2d 569, 576 (D. Md. 2003), and in my opinion the grant of variance relief is a “reasonable accommodation” under that statute to which the Petitioners are entitled.

THEREFORE, IT IS ORDERED, this 14th day of **June, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit a side yard setback of 5 ft. in lieu of the required 10 ft. for a one story addition to an existing dwelling and a 10 ft. rear yard in lieu of the required 30 ft. for an existing attached garage, 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