

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(3417 Garrison Farms Road)		
3 rd Election District	*	OF ADMINISTRATIVE
2 nd Council District		
Corinne & Adam Janet	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2017-0339-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Corinne and Adam Janet, owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from § 1B02.3.B of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and (2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback. A site plan was marked as Petitioners’ Exhibit 1.

Corinne & Adam Janet appeared in support of the Petition. Timothy M. Kotroco, Esq. represented the Petitioners. A neighbor (Nancy Cohen) opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not oppose the request.

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).

Richard Matz, a professional engineer accepted as an expert, testified that there is a grade change in the rear of Petitioners' property, and he also noted that each home and lot in this community was in some sense unique in terms of size, shape and configuration of the dwelling. I believe this testimony is sufficient to establish the "special circumstances" required under B.C.Z.R. §307 and the case law interpreting that section. *See* Baltimore County Board of Appeals Case # 2017-0122-SPHA (granting variance due to unique shape of lot). If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct the proposed improvements. 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.

Ms. Cohen stated the garage was already enclosed and that Petitioners did not secure the needed permits for the construction. That fact causes me some concern, but such issues cannot be resolved or addressed in a zoning hearing. Instead, it is the Director of Permits, Approvals and Inspections who is authorized by the County Code to issue stop-work orders and impose civil penalties in cases where a resident was found to have violated the County's codes or regulations.

Ms. Cohen also expressed concern with the loss of her view across Petitioners' property and down the street, which she believes would be obstructed by the garage. While I can appreciate that concern, an adjoining owner has no legal right to an unobstructed view across his/her neighbor's property, a point frequently litigated in waterfront settings. Petitioners would be entitled to construct a fence or a vegetative buffer along the common property boundary, which would also block or at least impair the neighbor's view.

Finally, no evidence was presented which would rebut the expert testimony regarding the

uniqueness of the site or the special circumstances faced by Petitioners. There was some discussion concerning whether or not other owners in the neighborhood sought and were granted variances in connection with improvements to their property. Upon further research I determined that variances were granted to five other owners along Garrison Farms Road and the contiguous cul-de-sac. See Case Nos. 2008-0171-A; 2008-0277-A; 1970-0182-A; 2007-0490-A and 1989-0551-A.

THEREFORE, IT IS ORDERED, this 7th day of **August, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance: (1) to permit a 28 ft. front yard setback in lieu of the required 40 ft. setback; and (2) to permit a 7 ft. side yard setback in lieu of the required 15 ft. setback, 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.

JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln