

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(309 W. Chesapeake Avenue)		
9 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
5 <sup>th</sup> Council District		
Joseph & Michaela Moran	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2018-0089-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 Joseph & Michaela Moran, the legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.): (1) to permit a principal building having a side of building to public street right-of-way setback of 10 ft. in lieu of the required 25 ft.; and (2) together with any required modification of the relief granted in the prior case and such additional relief as the nature of this case may require for approval of the proposed improvements shown on the plan which accompanied this petition. A site plan was marked as Petitioners’ Exhibit 1.

Owner Joseph Moran and professional engineer John Motsco appeared in support of the petition. Michael Ruby (a neighbor) opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. There were no substantive Zoning Advisory Committee (ZAC) comments received from any of the reviewing County agencies.

The site is approximately 8,750 sq. ft. in size and zoned DR 5.5. The property is improved with a single-family dwelling constructed in 1932. The dwelling was enlarged at some time prior to 1989, at which time a special exception was granted to permit the operation of a law office.

See Case No. 1989-0534-X. The law office use continued until 2003, at which time the Petitioners purchased the home. Petitioners reside in the home and care for an elderly parent who lives with them. They seek a variance to construct a first floor bathroom to accommodate his disability.

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 essentially rectangular and is similar in shape and size to surrounding properties. While it is a corner lot, it does not have any distinguishing or defining features not found on other properties in the neighborhood. As such, I do not believe it is unique in a zoning sense. Under Maryland law, 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.

But as discussed at the hearing, it is doubtful a variance is needed in the first instance. This property is situated in the Southland Hills subdivision. The plat for that community was recorded in 1926 (PB 8/56), and the subject property is shown thereon as Lot 1 in Block 4. Given the age of the subdivision, this property fits the description in B.C.Z.R. §1B02.3.A.5, as a lot “which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission.”

That regulation also states “contrary provisions of this article (i.e., Article 1B) notwithstanding...this subsection (i.e., 1B02.3) shall apply to the use, occupancy and development of; alteration or expansion of structures upon” a lot described in §1B02.3.A.5. The subject property is zoned DR 5.5, which requires a “minimum width of individual side yard” of 10 feet. B.C.Z.R.

§1B02.3.C.1. Petitioners propose a 10 ft. side yard, which would satisfy this requirement.

Mr. Motsco indicated he was unsure whether the 25 ft. “street setback” requirement was contained within the B.C.Z.R. or Zoning Commissioner’s Policy Manual (Z.C.P.M.). I do not believe that requirement is found in the Regulations. The Z.C.P.M. contains a section entitled “Method of Measuring Setbacks” which appears to indicate an increased setback is required in cases where the yard in question adjoins a public street. Z.C.P.M. §§ 1-1.3.a & 1B-26.2. But as with most things in the Z.C.P.M., this is far from clear; calling it cryptic might be generous. That Manual was adopted in 1992 and has not been updated or amended since that time, even though the B.C.Z.R. has been amended twice (i.e., 1998 and 2008 Editions) and is supplemented routinely with legislative updates enacted by the County Council. As such I do not believe the Manual is a reliable resource for interpreting the Regulations.

Petitioners submitted the site plan from the 1989 special exception case (Petitioners’ Exhibit 2), and it clearly reflects the Florida Road side yard setback at that time was 14 ft. The Zoning Commissioner granted the petition for special exception and approved the site plan, and a side yard variance was not deemed necessary.

Petitioners also submitted the site plan from a 2004 zoning case involving the subject property. Petitioners’ Exhibit 3. In that case Mr. Moran sought a special exception to operate at the subject property a real estate appraisal company. Although that petition was ultimately withdrawn, the site plan which was reviewed by the zoning office clearly indicated the Florida Road setback was 14 ft. The County did not impose a 25 ft. setback requirement, and Petitioners were not instructed to obtain a variance for that condition. As such, while I do not believe a 25 ft. setback is applicable, Baltimore County should at this point be equitably estopped from imposing such a requirement in this case. *Permanent Financial Corp. v. Montgomery County*, 308 Md. 239

(1986).

Moreover, even if one assumes the Z.C.P.M. imposes an enhanced setback for street frontages, I do not believe that requirement can be enforced in this case. Under familiar legal principles, a policy is enforceable when it interprets or explains a requirement set forth in a detailed regulation or statute. Indeed, in a section concerning enforcement of the zoning regulations the County Code expressly provides a civil penalty for violation of the “Baltimore County Zoning Regulations, policies, rules, or regulations *interpreting* the zoning regulations.” B.C.C. § 32-3-602 (emphasis added). In this case the Z.C.P.M. goes beyond an interpretation of the Regulations or explaining how setbacks are measured; the Manual in fact creates a substantive requirement not found in the B.C.Z.R.

THEREFORE, IT IS ORDERED, this 17<sup>th</sup> day of **November, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance: (1) to permit a principal building having a side of building to public street right-of-way setback of 10 ft. in lieu of the required 25 ft, be and is hereby DENIED.

IT IS FURTHER ORDERED that the applicable side yard setback (adjoining Florida Ave.) is 10 feet, per B.C.Z.R. §1B02.3.C.1.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln