

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(18221 Foreston Road)		
5 th Election District	*	OF ADMINISTRATIVE
3 rd Council District		
Marlin L. Masemore	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2018-0256-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Marlin L. Masemore, legal owner of the subject property (“Petitioner”). As originally filed the Petition seeks variance relief from §1A09.7.B.5.b(1)(a) of the Baltimore County Zoning Regulations (“BCZR”) to permit a proposed dwelling (contingent upon minor subdivision approval by the DRC) with a side setback of 57 ft. to cultivated land in lieu of the required 300 ft. After meeting with representatives from the Department of Planning (“DOP”) the Petitioner modified the request and proposed a side setback of 150 ft., as shown on the revised site plan admitted as Petitioner’s Exhibit 1.

Marlin L. Masemore appeared in support of the petition. The adjacent neighbor, represented by Dave Bowersox, Esq. opposed the request. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Bureau of Development Plans Review (“DPR”) and the DOP. Neither agency opposed the request.

The site is approximately eleven (11) acres in size and zoned RC-8. The property is improved with a single-family dwelling constructed in 1974, which is Petitioner’s principal residence. Petitioner proposes to create a two lot minor subdivision on his property. One lot

(containing the existing single-family dwelling) would be three (3) acres in size and the other lot eight (8) acres. Petitioner proposes to construct a single-family dwelling on the proposed, unimproved eight (8) acre lot, and seeks a variance from the 300 ft. setback requirement in the RC 8 zone.

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).

While I understand Petitioner would prefer to locate the new home as shown on the site plan, such a desire cannot justify the grant of a variance. In *Montgomery County v. Rotwein*, 169 Md. App. 716 (2006), the court denied a variance request where the evidence demonstrated that the owner had other areas on his lot where a garage could be built without the need for a variance. The same is true in this case.

In addition, as protestant's counsel noted, 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. Petitioner failed to produce any evidence or argument which would establish the subject property as unique, or that he would experience a practical difficulty if the petition was denied. As such I believe the petition for variance must be denied.

THEREFORE, IT IS ORDERED, this 5th day of **July, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Section 1A09.7.B.5.b(1)(a) of the Baltimore County Zoning Regulations ("BCZR") to permit a proposed dwelling (contingent upon minor subdivision approval by the DRC) with a side setback of 150 ft. to cultivated land in

lieu of the required 300 ft., be and is hereby DENIED.

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