

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(926 Ellendale Dr.)		
9 th Election District	*	OF ADMINISTRATIVE
3 rd Council District		
CR of Maryland, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2019-0003-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by CR of Maryland, LLC, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief pursuant to Sections 1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to permit a proposed dwelling with an 8 ft. side yard setback in lieu of the required 15 ft. side yard setback; (2) to permit a front street setback of 40 ft. in lieu of the averaged front street setback of 46 ft.; and (3) to permit a minimum sum of side yard widths (setbacks) of 33 ft. in lieu of the required 40 ft. A site plan was marked as Petitioner’s Exhibit 1.

Alexander Cruz and surveyor Bruce Doak appeared in support of the petition. Howard L. Alderman, Jr., Esq. represented Petitioner. Two neighbors attended the hearing and opposed the requests. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the reviewing county agencies.

The site is approximately 22,500 sq. ft. in size and zoned DR 2. The site was previously improved with a single-family dwelling constructed in the 1950s, although that structure was razed earlier this year. Petitioner proposes to construct a replacement dwelling in essentially the same location as the previous home, although zoning relief is required to do so.

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's shape and size is similar to that of many of the other homes in the Glen Ellen subdivision, which was recorded in 1947. Petitioner's Exhibit 6. Bruce Doak, a surveyor accepted as an expert, testified that the property is served by private well and septic, which he opined was a unique condition for a DR-zoned property inside the Urban Rural Demarcation Line ("URDL"). While it is unusual for homes inside the URDL to be served by private water and sewer, it appears based on the testimony that the properties adjoining the subject property (and presumably most or all of the other homes in the subdivision) have similar facilities. As such, I do not believe that condition renders the property unique.

Mr. Doak testified (as shown on the site plan) the well for the property was previously located inside of the original dwelling, and he opined this factor made the property unique. He indicated the County wanted the well to remain in its original location, which caused Petitioner to shift the location of the proposed home on the lot and generated the need for variance relief. A similar argument was made by the owner in *Stillman v. Zoning Board of Appeals*, 596 A.2d 1 (Conn. 1991). In that case, the appellate court held the zoning board properly granted a setback variance when the location of the well and septic systems prevented the applicant from constructing an addition to her dwelling anywhere except within the setback.

But in 2015 the Supreme Court of Connecticut expressly overruled *Stillman*, and in doing so admonished that "the power to grant variances must be exercised sparingly." *E and F Assoc.*,

LLC v. Zoning Board of Appeals, 127 A.3d 986 (Conn. 2015). Of course, the court in *Cromwell* also held 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.

THEREFORE, IT IS ORDERED, this 11th day of **September, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Sections 1B02.3.C.1 and 303.1 of the BCZR: (1) to permit a proposed dwelling with an 8 ft. side yard setback in lieu of the required 15 ft. side yard setback; (2) to permit a front street setback of 40 ft. in lieu of the averaged front street setback of 46 ft.; and (3) to permit a minimum sum of side yard widths (setbacks) of 33 ft. in lieu of the required 40 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