

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(19675 Eagle Mill Road)		
6 th Election District	*	OF ADMINISTRATIVE
3 rd Council District		
Eleanor Hardy	*	HEARINGS FOR
<i>Legal Owner</i>		
Michael & Heather Brenner	*	BALTIMORE COUNTY
<i>Contract Purchasers</i>		
	*	CASE NO. 2019-0108-A
Petitioners		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Eleanor Hardy, legal owner of the subject property and Michael & Heather Brenner, contract purchasers (“Petitioners”). Petitioners are requesting variance relief from Sections 1A09.7.B.5.b(1)(a) and 400.1 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to allow a proposed dwelling with a right side yard setback of 140 feet and a rear yard setback of 115 to an adjacent property that is used for pasture, in lieu of the required 300 feet for both as determined by the Director of Environmental Protection and Sustainability; and (2) to permit a proposed accessory structure (shed) be located in the front yard in lieu of the required rear yard location. A site plan was marked as Petitioners’ Exhibit 1.

Michael Brenner and surveyor Geoff Schultz appeared in support of the petition. Clay Seitz (a neighbor), who was represented by Gary Graham, Esq., opposed the request. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency did not oppose the requests.

The site is approximately 2.210 acres in size and is zoned RC-8. The property is unimproved and Petitioners propose to construct a single-family dwelling on the lot. Given the

300' setback imposed in the RC-8 (Environmental Enhancement) zone, variance relief is required before a dwelling can be constructed on the lot.

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 unique aspect of the property is its RC-8 zoning, which is a seldom seen zoning classification. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct a dwelling on the lot. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare.

The reality is that if a variance is not granted a dwelling could not be built on this lot, which could arguably constitute a taking or forfeiture. In any event, it would deny the Petitioners a reasonable use of their land and a return on their investment. The question concerns the magnitude of relief required to enable a home to be constructed at the site.

Maryland law requires that a petitioner seeking a variance must prove the request is the minimum reasonably necessary to overcome the exceptional circumstances or practical difficulties caused by the zoning ordinance. *Montgomery County v. Rotwein*, 169 Md. App. 716 (2006). In this regard, I believe the proposed home shown on the original (signed and sealed by Mr. Schultz on October 3, 2018) and amended (as forwarded via e-mail to the undersigned on December 13, 2018) site plans should be relocated north and east on the lot so the structure is as far as possible from the adjacent farm. This is the intent of the RC-8 setbacks and they should be honored to the

extent practicable.

THEREFORE, IT IS ORDERED, this 19th day of **December, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR Section 1A09.7.B.5.b(1)(a) to allow a proposed dwelling with a right side (as one faces the front of the proposed home) yard setback of 160 feet and a rear yard setback of 150 feet to an adjacent property that is used for pasture, in lieu of the required 300 feet for both as determined by the Director of Environmental Protection and Sustainability, be and is hereby GRANTED.

IT IS FURTHER ORDERED the Petition for Variance pursuant to BCZR Section 400.1 to permit a proposed accessory structure (shed) be located in the front yard in lieu of the required rear yard location, be and is hereby DENIED.

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