

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(6401 Sherwood Road)		
9 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
5 <sup>th</sup> Council District		
Magid Elias	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2019-0150-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 Magid Elias, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from Sections 1B02.3.A.5.B and C.1 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) To permit existing improvements located on an existing lot of record platted in 1927, to have: (A) width at the building line of 50' in lieu of the 55' required, (B) a side yard width of 6.5' in lieu of 10' required; and (C) a front yard depth of 19.6' in lieu of the 25' required ; (2) A determination of no merger with adjoining property by mere adjacency; and (3) For such additional relief as the nature of this case may require for approval of the existing buildings, uses and conditions as shown on the plan which accompanied this petition. A site plan was marked as Petitioner’s Exhibit 1.

Professional engineer John Motsco appeared in support of the petition. Howard L. Alderman, Esquire represented the Petitioner. Numerous members of the community opposed the requests. 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 opposed the request.

The site is approximately 7,500 square feet in size and is zoned DR 5.5. The property is improved with a single family dwelling constructed in 1953. Since the improvements were constructed prior to the adoption of zoning regulations in Baltimore County, this constitutes a lawful nonconforming structure under BCZR Section 104. Petitioner seeks variance relief in this case only because she proposed to construct a single family dwelling on the adjacent vacant lot, as considered in Case No. 2019-0151-SPHA.

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).

Based on the testimony and exhibits submitted by Petitioner, I do not believe the physical characteristics of the subject property render it “unique” as that term is used in *Cromwell*. The lot is similar in size and shape to many of the other lots in the Idlewylde community. No evidence was presented to show the property had topographical and/or environmental features not found on nearby properties. As such, I do not believe Petitioner has satisfied the stringent test for variance relief. *Cromwell*, 102 Md. App. at 699 (variance should be granted “sparingly” since it is “an authorization for that ... which is prohibited by a zoning ordinance”).

THEREFORE, IT IS ORDERED, this **11<sup>th</sup>** day of **January, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Sections 1B02.3.A.5.B and C.1 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) To permit existing improvements located on an existing lot of record platted in 1927, to have: (A) width at the building line of 50' in lieu of the 55' required, (B) a side yard width of 6.5' in lieu of

10' required; and (C) a front yard depth of 19.6' in lieu of the 25' required ; (2) A determination of no merger with adjoining property by mere adjacency; and (3) For such additional relief as the nature of this case may require for approval of the existing buildings, uses and conditions as shown on the plan which accompanied this petition, be and is hereby DENIED.

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:dlw