

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(4607 Prospect Avenue)	*	OFFICE OF
4 <sup>th</sup> Election District		
3 <sup>rd</sup> Council District	*	ADMINISTRATIVE HEARINGS
Donna V. Bair, <i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
	*	
Petitioner	*	<b>Case No. 2019-0342-SPHA</b>
* * * * *		

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Donna V. Bair, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to approve a nonconforming lot width and lot area, pursuant to BCZR Section 104.1.; (2) to approve a nonconforming dwelling side yard setback, pursuant to BCZR Section 104.1; and (3) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC §13-6-101.

A Petition for Variance seeks: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of the side yards of 14.9 ft. in lieu of the required 50 ft.; (3) to permit an existing shed with a side yard setback of 26 inches in lieu of the required 30 inches; and (4) to permit, if necessary, an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Donna Bair and surveyor John Lemmerman appeared in support of the requests. Lawrence E. Schmidt, Esq. and Zachary J. Wilkins, Esq. represented Petitioner. Numerous neighbors and

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 certain of the zoning requests.

### SPECIAL HEARING

The subject property is shown as Lot 10 on the Plat of Glyndon, filed long before adoption of the BCZR. As such it is obvious the size and width of the lot (neither of which satisfy current DR1 zone requirements) are lawfully nonconforming. This means the lot was properly created long ago, and became nonconforming when the BCZR was adopted in 1955. That aspect of the special hearing request will be granted.

Similarly, the existing shed in the rear yard appears to have been constructed many years ago, likely before the BCZR required a 2 ½ ft. setback for accessory structures. The shed is 26 inches from the property boundary, which is just 4 inches shy of the required setback. As such, though included as a variance request, this will be approved as a lawful nonconforming structure under the special hearing petition.

But I believe the remainder of the special hearing requests must be denied as a matter of law. While the side yard setbacks were deficient and likely nonconforming when Petitioner purchased the property in 2014, improvements were made on both sides of the dwelling since that time. As discussed at the hearing Petitioner failed to obtain a building permit for these recent improvements and the setbacks are in violation of the BCZR. As a result the side yard setbacks (of 0' and 14.9') are not lawfully nonconforming. With respect to the fence, I do not believe it complies with the BCZR and therefore that aspect of the special hearing must also be denied. While the BCZR specifies fences surrounding pools are exempt from the 42" height limitation,

another section of the same regulation states the exemption is not applicable in an historic district, like Glyndon. BCZR §427.1.A.

### VARIANCE

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 site plan, photos and other exhibits I do not believe the subject property is unique in a zoning sense. The shape, size and topography of the lot is similar to many other properties in the community. While Glyndon is a historic district, the subject property itself is not historic. As such I do not believe that attribute can render this property unique; *i.e.*, unlike surrounding properties.

In addition, while Petitioner's counsel is correct that the boundary dispute issue must be resolved in circuit court, I do not believe variance relief can be properly granted in a case when the result would be to countenance a trespass onto another's property. It is undisputed, as shown on the site plan, that the improvements intrude 2.5 ft. onto the property owned by the Fradkins. It would be inappropriate, in my opinion, to grant a variance to "legitimize" from a zoning perspective the *status quo*. The BCZR specifies that variances must be in "strict harmony with the spirit and intent" of the regulations, and must not be injurious to the general welfare. BCZR §307.1. I do not believe that the requested variances would satisfy either criterion.

THEREFORE, IT IS ORDERED this 19<sup>th</sup> day of **August, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to approve a nonconforming lot width and

area; and (2) to approve as a lawful nonconforming structure an existing accessory (shed) in the rear yard with a side yard setback of 26 inches in lieu of the required 30 inches, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Special Hearing: (1) to approve a nonconforming dwelling side yard setback; and (2) to confirm that an existing fence (swimming pool enclosure) with a height of 6 ft. is in compliance with BCZR Section 427.1 and BCC Section 13-6-101, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an existing 12 ft. x 28 ft. attached garage addition with a side yard setback of 0 ft. in lieu of the required 20 ft.; (2) to permit an existing 12 ft. x 28 ft. attached garage addition with a sum of side yards of 14.9 ft. in lieu of the required 50 ft.; and (3) to permit an existing fence (swimming pool enclosure) with a height of 72 inches in lieu of the maximum permitted 42 inches, 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