

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(1215 B Providence Road)		
9 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
3 <sup>rd</sup> Council District		
James K and Grace K. Rhee	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2019-0468-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 James and Grace Rhee, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from Sections 1B02.3.C.1 and 301.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a proposed dwelling and a front porch with a setback of 25' and 20' in lieu of the required 50' and 37.5', respectively. A site plan was marked as Petitioner’s Exhibit 1, and an aerial photograph of the property was marked as Exhibit 2.

James and Grace Rhee, as well as Brendan Carlson, the contract purchaser, appeared in support of the petition. Craig Rodgers, land use and design consultant appeared on their behalf. They were represented by Timothy Kotroco, Esq. Lorraine and Dennis Feola appeared in opposition to the Petition, along with Licensed Surveyor and land use and design consultant, Bruce Doak. They were represented by Francis Borgerding, Jr., Esq.

The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Environmental Protection and Sustainability (“DEPS”).

The subject property is located off of Providence Road north of the beltway. The site is

approximately 1.2 acres in size and is zoned DR-1. It is not served by public water or sewer, which is why the requested variance relief is needed.

Mr. Rodgers was offered as an expert consultant in land use, design and zoning. He testified that he has been accepted as such many times over the years in this and other administrative courts and that he has worked in these fields for over forty years. On *voir dire* by Mr. Borgerding, the witness acknowledged that he was not a licensed surveyor and that he held no other professional licenses. I accepted Rodgers as an expert based on his years of experience, despite his lack of licensure.

Rodgers testified that the property in question was sub-divided into 3 lots by the Rhees in or around 2005. The Rhee's residence is on Lot 1 and the subject property is lot 3, which is accessed by a long panhandle drive. Rodgers explained that a septic field had previously been approved but when it was retested one of the sites (3C) failed to "perk." As a result the septic field had to be adjusted to include site 3D, which had successfully perked. *See*, Petitioners' Exhibit 1. Rodgers explained that this adjustment of the septic field caused the site of the proposed residence to be pushed closer to the front property line in order to accommodate the minimum 10,000 square feet for the septic recovery area (SRA), as well as the minimum SRA setbacks of 10' from the rear lot line, and 20' from the residence. As a result, the proposed dwelling, as depicted on Petitioners' Exhibit 1, is only 25' from the front property line and the porch is only 20' from the line. Mr. Rodgers explained that in his opinion the property is unique within the meaning of BCZR Sec. 307 because it is irregularly shaped and steeply graded. In addition, it is not served by public water and sewer, as is usually the case in DR-1 zones. He testified that the contract purchaser, Mr. Carlson, would experience a hardship if the setback regulations were strictly enforced because he would not be able to construct the home where he

hopes to. On cross examination Rodgers acknowledged that it may be possible to site the residence elsewhere on the lot but that it would require the removal of more trees and necessitate more grading. Mr. Kotroco rested the Petitioners' case in chief.

In opposition Mr. Borgerding called Bruce Doak, a licensed surveyor. Doak testified that he has been accepted as an expert in land use, design, and zoning by this court numerous times. Mr. Kotroco acknowledged that he has employed Doak many times himself and that he would stipulate to his expert credentials. Doak was therefore accepted as an expert in land use, design, and the BCZR.

Mr. Doak produced the minor subdivision plan for the three lots in question. It was accepted as Protestants' Exhibit 1. He marked in orange the septic recovery area (SRA) which was delineated on the existing subdivision plan, as well as the well area. Doak then produced a site drawing he had done of Lot 3 on which he had shifted the SRA clockwise on the parcel toward the front property line. Doak illustrated these adjustments by highlighting a portion of the old SRA in yellow and the new SRA of similar square footage in pink. This Plan was admitted as Protestants' Exhibit 3. Doak explained that in connection with the SRA adjustment he had also sited the proposed residence further south and east on the lot. By doing so he explained that all the setback requirements were met except for the rear lot line setbacks. Doak testified that in his opinion the property was not really unique; but, even if it was considered to be unique, any hardship could be avoided by adjusting the site plan as he had done. Finally, Doak estimated that if the variances were granted the proposed residence on Lot 3 would be only 75' to 80' from the Feolas' home. On cross examination Doak acknowledged that moving the location of the house as he proposed would require removing substantially more trees from the site and doing more grading.

Ms. Feola then testified. She explained that she and her husband's home sits immediately adjacent to the north of Lot 3. She testified that they bought their lot in 1994 and built their home in 1995. She explained that because of septic and setback issues they had to purchase approximately a tenth of an acre of additional property in order to meet all setbacks and that they had done so. She further testified that all the existing homes in the neighborhood have a good deal of privacy due to the proper setbacks and tree cover. She explained that there are virtually no trees between their home and the proposed location of the house on Lot 3. She stressed that she and the other neighbors all had to comply with all the setback requirements and that her home would lose a great deal of privacy if this variance was granted. They therefore object to the proposed relief. On cross examination Mr. Kotroco asked her if she and her husband had opposed or participated in the minor subdivision process that the Rhees had done in 2005. Ms. Feola stated that they would have but that they did not get the opportunity because the Rhees didn't properly post and advertise the subdivision plan. That concluded the evidence.

The general rule is that variances are not favored because "citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). Indeed, this is the very purpose of zoning regulations - to insure orderly and compatible development. Therefore, under BCZR Sec. 307, and Maryland common law, in order to be entitled to variance relief the Petitioners must satisfy a two-step legal analysis, 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).

Although a close question, the property in question may be sufficiently unique under BCZR Sec. 307 based on its irregular shape, steep grade, and, more importantly, the fact that it is zoned DR-1 but is not served by public water or sewer. However, I find that the variance relief cannot be granted for two reasons: First, the Protestants were required to strictly comply with the BCZR setback requirements when they built their home and they too “are entitled to strict enforcement of the existing zoning regulations” in this case. *Bounds, supra*. Second, it is undisputed that the hardship in this case can be obviated by siting the proposed residence further east and south on the lot. I understand (and regret) that this would necessitate clearing more trees and doing more grading, but it is possible, and it would provide the distance and privacy that the Protestants are rightfully seeking.

THEREFORE, IT IS ORDERED, this 12<sup>th</sup> day of **November, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations to permit a proposed dwelling and a front porch with a setback of 25' and 20' in lieu of the required 50' and 37.5', respectively, be and is hereby DENIED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed \_\_\_\_\_  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/sln