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| <b>RE: PETITION FOR VARIANCE<br/> W/S Sue Grove Road, 2150' of<br/> Turkey Point Road<br/> 826 Sue Grove Road<br/> 15<sup>th</sup> Election &amp; 6th Councilmanic Districts<br/> Legal Owner(s): John Edward Hauser, Jr. et al</b> | *<br>*<br>*<br>*<br>*<br>*<br>*<br>* | <b>BEFORE THE COUNTY<br/> BOARD OF APPEALS<br/> FOR<br/> BALTIMORE COUNTY<br/> Case No. 2011-0120-A</b> |
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**OPINION**

This case comes as a result of Petitioners, John Edward Hauser Jr. et al. seeking zoning approval in the form of a Variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing dwelling addition with a side yard setback of zero (0) feet in lieu of the minimum required ten (10) feet, and a sum of side yard setback (8) feet in lieu of the minimum required twenty-five feet, and a rear yard setback of zero (0) feet in lieu of the required 30 feet. Appearing on behalf of the Petitioners was Fred Hauser, personal representative and son of John Edward Hauser, deceased. Protestant, neighbor Thomas L. Hollenshade was also present along with Thomas A. Church, a professional Engineer.

**BACKGROUND**

As appears on the site plan, the subject property is an irregularly shaped waterfront parcel located in the west side of Sue Grove Road in eastern Baltimore County. The property is improved with a one-story, single family dwelling, deck, pier extending into the Sue Creek and a 20'-8' wide X 12'-1' deep addition, which is the subject of the instant request for variance relief. John Edward Hauser owned the property since 1986 and built the home in 1997. The addition is elevated at the rear of the existing dwelling and was evidently constructed to provide John Hauser with extra space and a water view of the Sue Creek. John Hauser had been in poor

health and unable to ambulate on his own. Fred Hauser testified that he eventually moved into the home to care for his father and is still residing there after his father's death.

In 2009, the Petitioners decided to construct an addition to expand the bedroom to the size needed to accommodate Fred Hauser's ability to reside with his father as his father's health was rapidly deteriorating. Construction was commenced, including excavation and the pouring of footings, the building of a deck, fabrication of roof trusses, and the enclosing of the structure.

In January of 2010 the Department of Permits and Development Management (DPDM) received written inquiries questioning the deck's enclosure without building permits. Code enforcement officers visited the site on January 29, 2010 and issued a stop work order, informing the Petitioners that building permits would be required before further construction could proceed. Despite the stop work Order, the structure was enclosed. Fred Hauser testified that the structure was enclosed to protect work that had already been done pending approval.

Fred Hauser further testified that since the death of his father, who started this project, he has been left with the aftermath. Mr. Hauser testified that he would like to be permitted to complete the project because he feels it was his father's wish to do so and is also left with the financial burden of possibly having to remove the structure.

Mr. Hauser's neighbor, Mr. Hollenshade testified that he found the addition to be out of place in comparison to the other structures in the area. He further believes that the structure has adversely impacted his property value and impeded the sale of his own property. While, he sympathizes with the Petitioners, he wants the structure to be torn down due to the fact that it is actually encroaching his property line.

#### DECISION

*Baltimore County Zoning Regulations*, Section 307.1, in pertinent part, states as follows:

**"...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."**

In *McLean v. Soley*, 270 Md. 216 (1973) the court established the following criteria

for determining practical difficulty or unreasonable hardship:

"1) Whether compliance with the strict letter of the restrictions governing various variances would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

Further, in *North v. St. Mary's County*, 99 Md. App. 502 (1994) the Court held that

"...the 'unique' aspect of a variance requirement does not refer to the extent of improvements on the property, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls." Id at 514

In the Court of Special Appeals in *Cromwell v. Ward*, 102 Md.App. 691 (1995), wherein the

Court writes:

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be

established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. **It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...." *Id.* at 698.**

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property has an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.... *Id.* at 710.

#### *Petitioner's Argument*

While the Petitioners appeared before this Board pro se, the nature of their legal argument consists of their contention that the circumstances regarding John Hauser's pursuit of this addition were "unique" and that removing the structure at this point would create a "practical difficulty." As stated in *North v. St. Mary's County*, cited above, the concept of "uniqueness" found in *Cromwell* deals specifically with the property itself, not the "uniqueness" of a Petitioner's circumstances. There has been no testimony presented before this Board that would meet the burden announced in *Cromwell* by showing that the Petitioners' property was in anyway unique.

While this Board sympathizes with the situation that the Petitioners have inherited due to the passing of John Hauser, this Board is bound to adhere to the principal requirements for granting variance relief found in *Cromwell* which have failed to be established by the Petitioners.

CONCLUSION

This Board is not persuaded that the Petitioners have illustrated the required showing of uniqueness found in *Cromwell v. Ward*, 102 Md.App. 691 (1995), therefore the Petitioners' Request for Variance Relief is **DENIED**.

ORDER

**THEREFORE, IT IS THIS** 3<sup>rd</sup> day of August, 2011 by the Board of Appeals of Baltimore County


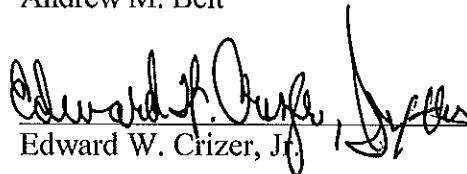
**ORDERED** that the Petitioner's Request for Variance Relief is hereby DENIED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

BOARD OF APPEALS  
OF BALTIMORE COUNTY



Wendell H. Grier, Panel Chair

  
Andrew M. Belt  
Edward W. Crizer, Jr.