

IN THE MATTER OF
THE APPLICATION OF
INGEBORG AND DOMENICO OCCORSO
-LEGAL OWNERS

FOR A VARIANCE ON THE PROPERTY
LOCATED AT 12519 FALLS ROAD
NE SIDE OF FALLS, 147' SE FROM
C/LINE OF IVY HILL ROAD

8TH ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO.: 13-021-A

* * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals on an appeal of the decision of the Administrative Law Judge (ALJ), dated August 30, 2012, wherein the ALJ granted a Petition for a Variance filed by the legal owners of the subject property, Ingeborg and Domenico Occorso, herein referred to as Petitioners. Petitioners are requesting variance relief from section 1.A04.3.B.2.b of the Baltimore County Zoning Regulations (BCZR). The Petitioners propose to construct a replacement dwelling with a side yard setback of 17 feet in lieu of the required 50 feet to accommodate a garage on the side of the house.

Protestant, Saeid Asgharinia, a neighbor at 12529 Falls Road, filed a timely appeal on September 26, 2012.

A hearing was held before the Board on November 13, 2012. The Petitioners, Ingeborg and Domenico Occorso were not represented by Counsel, and appeared *pro se*. Protestant, Saeid Asgharinia, was represented by Francis X. Borgerding, Jr., Esquire. Oral argument was held at the close of the hearing on November 13, 2012 and no closing briefs were filed. A public deliberation was conducted on December 11, 2012.

Background

Petitioners, Mr. and Mrs. Occorso purchased the subject property, which is 1.4 acres, zoned RC5 and known as 12519 Falls Road. The lot contains a dwelling which the Occorsos intend to replace. The Petitioners filed for an Administrative Variance with a closing date of March 26, 2012. On March 29, 2012, Administrative Law Judge (ALJ) Timothy Kotroco requested a formal hearing on the matter, since the dwelling in question was not "owner occupied". A hearing was scheduled on May 17, 2012 before ALJ John Beverungen and the Petitioners appeared and presented their evidence. No other Protestant or party to the matter was in attendance at that time.

By decision dated May 17, 2012, ALJ Beverungen granted Petitioner's request for a Variance from 1A04.3.B.2.b of the Baltimore County Zoning Regulations (BCZR), to permit a side yard set back of 23 feet in lieu of the required 50 feet for a garage.

Subsequently, on July 20, 2012, Mrs. Occorso requested Judge Beverungen to amend his Order to allow a variance of 18 feet rather than 23 feet, since there was an error made in the original calculations. By letter dated July 12, 2012, Judge Beverungen indicated to Petitioner that he was unable to amend the Order and that in order to obtain relief the Petitioners would have to file a new Petition for a Variance, since the property was not "owner occupied".

On August 1, 2012, Petitioners filed a second Petition for Administrative Variance requesting a proposed replacement dwelling with a side yard set back of 17 feet in lieu of the required 50 feet.

On August 30, 2012, Judge Beverungen issued an Opinion and Order granting the requested Administrative Variance for the property, since it had been posted on August 12, 2012 and there had been no request for a public hearing. Based upon the documentation presented to

him and supporting affidavits he granted a variance from Section 1A04.3.B.2.b of the BCZR to permit a replacement dwelling with a side yard setback of 17 feet in lieu of the required 50 feet for a garage. The documentation for that decision consisted of a letter from Scott E. and Patricia L. Harman, the occupants of 12515 Falls Road, the neighbors to the south of the Petitioners property at 12519 Falls Road.

On September 26, 2012 an appeal was filed by the neighbor on the north side of the Petitioners property Mr. Saeid Asgharinaia, and a hearing was held as set forth above.

Throughout the hearing it appeared that the Protestant was not so concerned about the variance requested for the south side of the property, with respect to the garage, but was concerned that the new house was constructed less than 50 feet from his property, thereby requiring another variance for the north side.

At the hearing before the Board, Petitioners agreed that that there was a need for a variance for the construction of the house, with respect to the north side of the property . They stated that they had filed for a variance and it was in the process of working its way through the procedure.

Testimony and Evidence

In testimony before the Board, Petitioners contended that the property was unique because of the irregular shape of the property. The Petitioner stated that the garage could not be located in any other location because of the septic system in the rear of the property. Petitioners presented a diagram which portended to show the septic system in the rear of the property, the diagram was hand drawn and was not made to scale.

Protestants presented J. Colbert, a Civil Engineer, accepted as an expert in site planning for residential, commercial and other non-residential land development projects. Mr. Colbert testified that in his opinion the property was not unique and confirmed that with several exhibits, one being an overlay of the area from Baltimore County as well as an environmental map which showed the outlines of various properties in the area. While it is true that the Petitioners property is an irregular shape, there are numerous irregular shape properties in and around the area of 12519 Falls Road. Therefore, it was the conclusion of Mr. Colbert that the Petitioner's property was not unique.

Protestant testified that his property was located just north of the Petitioner's property and that he would be able to see the garage if it was constructed in the proposed place. He felt that the proposed house was not in keeping with the neighborhood on Falls Road and that it would devalue his home. He was also concerned about the location of the new house with respect to his property, as far as the location to his property line. However, this was not an issue in the hearing before the Board.

Decision

Petitioner is seeking variance relief from section 1A04.3.B.2b of the BCZR. The Board reviewed its notes and the evidence presented in the hearing. The burden of proof for a variance rests with the Petitioners, who must show uniqueness and practical difficulty or hardship.

The Board specifically finds that under Cromwell v. Ward (102 Md.App. 691, 651 A.2d 424, (1995)), the Petitioners do not meet the requirement of "uniqueness." In that case, the Court, at page 710 quoted its decision in North v. St Mary's County (99 Md.App. 502, 638 A.2d 1175 (1994)) where it stated:

"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 in bearing or parting walls.

If the Board finds that the property is not unique, there is no need to review the findings with respect to hardship.

In the present case the Board finds that the Petitioners have not met the burden of proof to show that the property is unique. The documentation presented by the Protestants indicates that there are numerous irregular shaped pieces of property in the vicinity of the property in question. Therefore, this property is not unique.

However, in his Order of May 17, 2012, ALJ Beverungen granted the Petitioner's variance request from 1A04.3.B.2b of the BCZR to permit a side yard setback of 23 feet in lieu of the required 50 feet for a garage. That decision was never appealed; therefore, the 23 foot variance is in effect. The Board has no authority to change that.

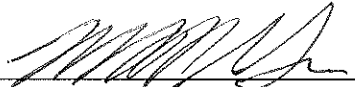
ORDER

THEREFORE, IT IS, this 4th day of January, 2013, by the Board of Appeals of Baltimore County,

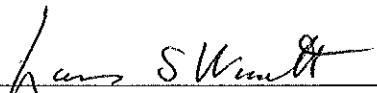
ORDERED that the Petitioners' request for Variance in Case No.: 13-021-A, seeking relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (BCZR) wherein the Petitioners propose to construct a replacement dwelling with a side yard setback of 17 feet in lieu of the required 50 feet., be and 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*.

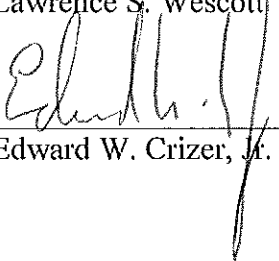
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Wendell H. Grier, Chairman



Lawrence S. Wescott



Edward W. Crizer, Jr.