Board of Appeals of Baltimore County

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February 22, 2016

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People's Counsel for Baltimore County
Office of People's Counsel
105 W. Chesapeake Avenue, Room 204
Towson, Maryland 21204

RE: *In the Matter of: Richard M. Folio*
Case No.: 14-185-A

Dear Counsel:

Enclosed please find a copy of the final majority Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter. Also enclosed is a copy of Mr. Belt's Dissent.

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*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosures
Duplicate Original Cover Letter

c: Richard M. Folio
George Neubeck/Hanover Road Association, Inc.
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law
Donna Ward
Vicki Locklear
Michael L. Snyder, Esquire
C. Robert Holtz
S. Glenn Elseroad
Frank and Donna Valentine

IN THE MATTER OF RICHARD M. FOLIO, Legal Owner/Petitioner 6200 Glen Falls Road Reisterstown, MD 21136	*	BEFORE THE BOARD OF APPEALS OF
Re: Petition for Variance for Pool House In Front Yard in lieu of Side Yard	*	BALTIMORE COUNTY
	*	Case No. 14-185-A

* * * * * * * * * * *

OPINION

This case comes to the Board on appeal of a final Order on Motion for Reconsideration of the Administrative Law Judge ("ALJ") dated June 30, 2014, granting a Petition for Variance seeking relief from Section 1A09.7.C.2.e and 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a proposed accessory structure (pool house/garage) to be located in the front yard in lieu of the required side or rear yard.

Public hearings were held before this Board on October 16, 2014, June 16, 2015 and September 24, 2015. Petitioner, Richard M. Folio was represented by Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, L.L.C. (hereinafter, the "Petitioner"). The Protestant, Donna M. Ward (hereinafter, the "Protestant") was *pro se*. Peter Max Zimmerman, Office of People's Counsel, participated in the hearings.

A public deliberation was held on December 3, 2015.

Factual Background

Petitioner, Richard Folio (the "Petitioner") is the owner of the property located at 6200 Glen Falls Road, Reisterstown, MD 21136 in the northwest area of Baltimore County, near the Carroll County line (the "Property"). The Property consists of 3.001 acres and is zoned R.C.8. It is improved with a single family, detached dwelling which fronts on Glen Falls Road. A garage sits slightly back from the front of the house. To the west of the house is a pool enclosed by a fence. To the rear are a tennis/basketball court and a turf soccer field.

Previously, the Property was zoned RC4. It was part of a larger tract of land encompassing 26.6 acres known as the 'Plummer Property.' In 1989, the County (under the County Review Group (CRG)) approved the subdivision of the Plummer Property into five (5) building lots plus a non-buildable one-acre parcel designated as Parcel B. The Petitioner has owned his Property (Lot 1) since 1998.

On the first day of *de novo* hearings before this Board (Oct. 14, 2014), the Parties, through their respective counsel, jointly requested that this Board stay this case, retain jurisdiction and require the Baltimore County Planning Director, or her designee, to perform their review function prescribed legislatively for specified zoning and development petitions in the RC8 zone. The Office of Planning had previously taken the position that the RC8 requirements for a certification by the Planning Director did not apply to this Property because, at the time of the subdivision of the Plummer Property, the zoning was RC4.

By Opinion and Order to Stay Proceedings dated December 15, 2014, this Board ordered the Planning Director or her designee to submit to this Board a written finding, determination and certification for the Property as required in BCZR §1A09.4.A for properties in the RC8 zone, within forty-five (45) days of the date of the Order.

After a site visit on December 31, 2014, the Director of Planning submitted to this Board on January 22, 2015, a certification that the proposal was inconsistent with the spirit and intent of the regulations. (Pet. Ex. 8). However, the Office of Planning suggested that the Petitioner redesign the proposed structure to reduce its mass in order that it would be complementary to the site and surrounding community. *Id.* The Office of Planning specifically recommended that "the structure be redesigned to eliminate the storage level, change the roof design and window treatment to look more like a garage than a residence and locate the structure in line with the front setback of existing house." *Id.*

Prior to the second day of hearings before this Board (June 16, 2015), the Petitioner requested that the Office of Planning review his redesigned structure wherein he removed the second level of the building as requested to keep the height of the building under the maximum 15 ft. height requirement. With removal of the second floor, the Office of Planning submitted to this Board on June 15, 2015, a "Recommendation of Revised Design" finding that the variance request was now consistent with the spirit and intent of the BCZR subject to the conditions that: (1) the second floor of the pool house is eliminated; (2) the shutters are removed from the windows; (3) a cupola is added to the roof; and (4) landscaping is added to the side of the structure. The Office of Planning accepted the Petitioner's assertion that the grade prevented the location of the pool house behind the front of the residence.

On the second day of hearings before this Board, the Petitioner testified before this Board that he has owned the land since 1997 and built the existing home in 1998. He described the home as a 2-story colonial measuring 2,100 sq. ft., not including the partially-finished basement. There is a detached-garage connected to the home by a breezeway. (Pet. Ex. 1A, 1B,1C and 1F).

The Petitioner indicated that he, and his 3 teenage children, need more living space. Toward that end, he hopes that the approval of the proposed pool house/garage into the front yard will permit the existing 2-car garage to be converted to living space for his family. He would propose to enclose the breezeway. In 2004, the Petitioner had a pool built in the rear yard, which sits to the west of the existing garage. (Pet. Ex. 1D and 1J).

The Petitioner testified that his home was the smallest house in the neighborhood. He related that other homes in the neighborhood had pools, detached and non-detached garages, as well as sheds. His Property has a circular driveway which, according to the Petitioner, sits at a lower elevation than Glen Falls Road. The Petitioner added that the topography slopes down toward the garage and that the slope becomes severe as it reaches the rear of the Property. (Pet. Ex. 1F and 1G).

The Petitioner highlighted that the existing pool measures 28x16. From the vantage point of the pool, he said that Glen Falls Road cannot be seen. When the pool was built, he explained that a retaining wall was constructed due to the slope. Importantly, the Petitioner testified that locating the proposed pool house/garage entirely within the rear yard would require "a lot of paving."

On cross examination, the Petitioner testified that the house had to be built in its present location due to the severity of the slope. He described the rear of the Property as including a "flex court" for use as both a tennis and basketball court, as well as a soccer field with a synthetic turf. The tennis/basketball court is equipped with lights. An aerial photograph of the Property accurately depicts these recreational features. (Pet. Ex. 12).

The Petitioner stated that, due to the lack of his financial resources at the time that the pool was installed, it was not 'practical' to locate the pool at the rear end of the Property. While the Petitioner admitted that he had not measured the slopes of neighboring properties, he believes that the slope on his Property is 'more severe' than his neighbors. In response to questions about whether there was an option to build the proposed structure on the east-side of the house, the Petitioner conceded that it would be too expensive.

A site plan for the proposed structure was prepared by Gregory Little, the owner of a design company known as "GBL Custom Home Design, Inc." (Pet. Ex. 10). Mr. Little is not an architect but designs structures under the direction of an architect. The site plan shows that the pool house/garage is proposed to be located 59 ft.+/- from the right of way on Glen Falls Rd. and 70' from the paving on Glen Falls Rd.

Specifically, the proposed structure is described in the elevations plans (Pet. Ex. 10). It consists of a 2 car garage with the 'pool house/bar' along with a porch to be located closest to the pool. Per the elevation drawings, the proposed garage measures 26 ft. in width, the 'pool

house/bar' measures another 12 ft. in width, and the porch is an additional 6 ft. in width. Thus, the total width of the proposed structure is 44 ft.

The proposed garage is equipped with HVAC. (Pet. Ex. 10). The proposed pool house/bar has a bathroom and a storage room. *Id.* The drawings also show an area for a bar with stools. *Id.* The proposed porch has concrete steps leading to the fence for the pool. *Id.* The drawings show that the structure would include a cupola, would not have shutters on the windows but would include landscaping as recommended by the Office of Planning.

Mr. Little described the slope surrounding the pool as 'severe'. Using the topography map, he commented that steep slopes on the Property are indicated by lines close together. (Pet. Ex. 7). Mr. Little also admitted that there are steep slopes in the neighborhood but that most of the homes were built on flat areas. He explained that the 'front yard' of the Property includes the distance from front wall of the home toward Glen Falls. Mr. Little measured the entire pool area as 50x30 (1500 sf). He also indicated that the tennis/basketball court measures 150x110 (16,500 sf).

On cross examination, Mr. Little agreed that the area to the east of the home was flat. He agreed that the only impediment to locating the proposed structure on the east side of the home was cost. Although Mr. Little was not hired to convert the existing garage to living space, he considered this to be an additional cost for the Petitioner. All of these factors considered together led Mr. Little to the conclusion that the Petitioner would suffer a 'financial hardship' if he was not permitted to locate the proposed structure partly in the front yard.

Testifying against the variance request was the Hanover Road Association, Inc. through its Vice President, Robert Slaterbeck. (Prot. Ex. 3; P.C. Ex. 11). Mr. Slaterbeck said that the Hanover Road Association opposed having another structure built upon this Property which is located within the Association's boundaries. The Association asserted that the Property already had too much impervious surface. He stated that locating a large structure at the crest of the hill would have an adverse impact on aesthetics and property values. Mr. Slaterbeck added that the Petitioner

could build a second story above the existing garage. He added that no other properties in the area have two (2) garages. Consequently, he believes that this proposal does not fit the neighborhood.

Protestant Donna Ward, 6130 Glen Falls Road, also opposed the request for variance. Her home is located on the east side of the Property. She and her husband built their home in 1995. She testified that the sloping topography of the Property was not unique. She stated that all properties in the neighborhood have similar slopes and that all the homeowners in the subdivision had grading issues when their homes were built. She presented photographs of her home and pointed out the sloping topography. (Prot. Ex. 5-1-B, 5-1-C, 5-1-E, 5-1-F, 5-1-G). Indeed, she was required to build her garage in the rear yard which cost additional funds. She presented a photograph confirming the location of her garage in the rear yard. (Prot. Ex. 5-1-C; Prot. Ex. 5-1-G).

Mrs. Ward stated that the Folio house is not the smallest in the neighborhood; there are 2 houses which are smaller. She testified that the proposed structure could be located on the east side of the Property. She added that not all homes in the neighborhood have a pool but that none of the homes have a pool house. She believes that the pool house is for convenience of the Petitioner. She believes the reason the pool house needs to be partially located in the front yard is due to the location of the pool.

Robert Holtz, 6126 Glenn Falls Road opposed the request. He built his home in 1998. He testified that another structure will increase the impervious surface, which will, in turn, cause water run-off and affect the local stream. In his opinion, the proposed structure would negatively impact the rural character of the neighborhood. Additionally, the size of the proposed structure is nearly the same size as his house.

Karl Locklear, 6134 Glen Falls Road, testified in opposition. He stated that he bought his property in 1995 and that it is steeply sloped. Mr. Locklear characterized this request as 'gross overdevelopment'. He is concerned that granting this variance would set a precedent for more

development. The size of the structure at 1,200 sq. ft. is equivalent to the size of a standard rancher. He noted that most homes in the area are less than 1,400 sq. ft.

George Harmon, 5429 Waywood Drive, Reisterstown, MD 21136 lives 1 mile away from the Property. Mr. Harmon was past President of the Hanover Road Association, Inc. from 1998-2003. Although he was offered as an expert on the environmental impact on water quality and sought to testify as such, the Board did not accept him as an expert finding that not only was he not qualified to express such an opinion, that such an opinion would not assist the Board in rendering its decision.

Law

In order for a variance to be granted, this Board must be convinced that the Petitioner has met the burden of proof as to both "uniqueness" and "hardship". Section 307.1 of the BCZR states, in pertinent part, 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...."

This Board is guided by the holding provided by the Court of Special Appeals in *Cromwell v. Ward,* 102 Md. App. 691, 698 (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...."

In requiring a finding of "uniqueness", the Court of Special Appeals in *Cromwell* referred to the definition of "uniqueness" provided in *North v. St. Mary's County*, 99 Md. App. 502, 514 (1993):

> 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. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls.

Cromwell at 710.

The *Cromwell* Court connected the variance law in Baltimore County with the law in Maryland and emphasized that:

> We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists.

Id.

When comparing the property at issue with other properties to determine 'uniqueness,' the terms 'area', 'neighborhood' and district have all been used interchangeably. (*Easter v. Mayor & City Council*, 195 Md. 395, 400 (1950) citing *Rathkopf, Zoning, 2d Ed.*, p. 215); *Marino v. City of Baltimore*, 215 Md. 206, 219 (1957); *Chesley v. Annapolis*, 933 A.2d 475, 176 Md. App. 413 (Md. App., 2007).

If the Property is determined to be "unique," then the issue is whether practical difficulties or unreasonable hardship exist. Toward this end, the Board acknowledges that a variance may be granted where strict application of the zoning regulations would cause practical difficulty to the

Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973); *Trinity Assembly of God v. People's Counsel*, 407 Md. 53 (2008).

To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

> 1. Whether strict compliance with the requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
>
> 2. Whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
>
> 3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Mclean at 214-215.

However, the law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

Id. at 722.

The Court of Special Appeals in *Montgomery County v. Rotwein*, 176 Md. 716, 732-33 (2006) citing *Cromwell*, held that economic loss alone does not satisfy the 'practical difficulties' test:

> Economic loss alone does not necessarily satisfy the 'practical difficulties' test because, as we have previously observed, 'every person requesting a variance can indicate some economic loss.' *Cromwell* at 715.....Indeed, to grant a variance application any time economic loss is asserted, we have warned, 'would make a mockery of the zoning program.'

Decision

In this case, the Petitioner is seeking a variance under the Performance Standards for Building found in BCZR, §1A09.7.C.2.e which reads in pertinent part as follows:

> C. Performance standards. Condition for approval pursuant to this section must be noted on the concept plan and development plan, or minor subdivision plan. The following standards are intended to foster creative development that promotes the goals stated in Section 1A09.1.B.
> * * * *
>
> > 2. Buildings.
> > * * * *
> > e. Structures accessory to residential use, excluding agricultural buildings, but including solar panels, antennas, and storage sheds, are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an R.C.8 zone; however, the height of accessory structures is subject to the provisions of Section 400.
> > * * * *

Because the height variance in this case was eliminated, the only variance remaining here is the area variance for 12 ft. into the front yard. Importantly, even without the variance, the Petitioner is still permitted, under the BCZR, to build the pool house/garage. Without the variance, the Petitioner needs to either reduce the size of the structure or do some grading to keep the pool house in the same location.

We find that, applying the holdings of the cases above to the facts of this case, this request should be denied. First, the Majority of this Board finds that the Property is not 'unique' under *Cromwell, supra,* because it does not have any 'inherent characteristic[s] not shared by other properties in the area' in terms of either, shape, topography, subsurface conditions, 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.

The Petitioner contends that his Property has severe slopes, thus making it unique from the other properties in the area. As the Majority of this Board sees it, based on the evidence presented, all the properties in the subdivision have the same steep slopes, and that, the subdivision of the Plummer Property is a 'neighborhood' in itself. The Majority finds that topographical map (Pet. Ex. 7) and the photographs submitted by Donna Ward (Prot. Ex. 5-4-C, 5-4-D, 5-5-C, 5-8-D, 5-9-C, 5-12, 5-13, 5-17-B, 5-17-C, 5-17-D) confirm the slopes are prevalent throughout the area. Testimony from Donna Ward, Robert Holtz and Karl Locklear reiterated the prevalence of steep slopes throughout the area.

The Court in *Cromwell*, *supra*, emphasized that the 'uniqueness' element of a property in Baltimore County must consist of a peculiar characteristic or unusual circumstance relating only and uniquely to the Property at issue, different and apart from other properties in the neighborhood. Accordingly, in this case, the Majority finds that the Property is not 'unique' for zoning purposes, based on the evidence presented. As a result, since 'uniqueness' is not found, there is no need for us to consider whether there are any 'practical difficulties'.

However, in the event that the appellate court would find that the Majority of this Board erred in failing to find 'uniqueness,' this Board unanimously finds that the facts here do not satisfy the 'practical difficulties' test to justify approval of the variance. First, applying the 3-part test in *McLean*, there was no evidence that not having an extra 12 feet for a pool house/garage would unreasonably prevent the Petitioner's use of his Property. The Property is already improved with a 2-car garage. While a pool house might be a nice feature, we cannot find that not having a pool house/second garage, would deprive the Petitioner 'use' of his Property. Indeed, the Property consists of 3 acres and is improved with a variety of recreational amenities which reinforces that the Petitioner is maximizing the use of his Property.

Second, we cannot find that denying 12 feet into the front yard would cause 'substantial injustice' to the Petitioner. At worst, the size of the pool house would be reduced or the Petitioner

will spend money on grading. Conversely, given that the Wards, Holtz and Locklears all endured grading issues while improving their properties to accommodate the natural slopes while keeping within the confines of the setbacks, we find that granting this variance would cause injustice to them.

Third, the Performance Standards of BCZR from which the Petitioner seeks relief, specify that the goal is to "foster creative development that promotes the goals stated in Section 1A09.1.B." When considering all the evidence together, we cannot find that relief from the ordinance could be granted in such fashion that goals set forth in BCZR §1A09.1.B could still be met. If we were to grant the variance, the last 3 goals (*i.e.* BCZR §§1A09.1.B.10; 1A09.1.B.11; and 1A09.1.B.12) would be ignored.

The goal set forth in BCZR §1A09.1.B.10 addresses the location of buildings and site conditions. The evidence presented in the Petitioner's photographs gives this Board a perspective on building location and site conditions such that there are no structures located in any front yards. (Pet. Ex. 12; Pet. Ex. 13B, 13C, 13D, 13E, 13F). The goal set forth in BCZR §1A09.1.B.11 discusses limiting the scale of development in order to preserve the traditional character of the community. We find that the photographs submitted by the Protestants accurately depict the limited development and rural character of the community. (Prot. Ex. 5-1-B, 5-1-D, 5-1-E, 5-1-F; Prot. Ex. 5-3-B, 5-3-C, 5-3-D). Adding a structure to the front yard would be tantamount to overdevelopment and would therefore be inconsistent with the rural character of the area.

Finally, BCZR §1A09.1.B.12 is directed toward maintaining the scale and character of Glen Falls Road. In regard to this goal, the Board weighs heavily the photographs of Glen Falls Road produced by the Petitioner. (Photos of Glen Falls Road attached to Pet. Ex. 8). Accordingly, based on the evidence here, permitting a structure in the front yard in this area would not be granted within the spirit of BCZR, §1A09.7.C.2.e.

Fourth, the testimony from both the Petitioner and his expert, Mr. Little, was that the hardship to be suffered by the Petitioner was 'economic.' Both witnesses testified that the only

impediment to building the pool house on the east side of the home was cost. Each also testified that the Petitioner would incur less grading cost if he could extend the structure into the front yard.

We find that any hardship upon the Petitioner is self-imposed. The size and location of the pool house/garage is for convenience of the Petitioner. The Petitioner has 3 cars – 2 of which are company vehicles. The porch in front of the pool house measures 6ft. in width. The pool house/bar area is 12 ft. The proposed garage is 26 ft. Any of these features could be reduced in size without depriving the Petitioner use of his Property. Alternatively, the size of the structure could remain if additional grading was done or the structure was built on the east of the home.

We also note that the January 22, 2015 Office of Planning Certification stated that the structure should be located behind "the front setback of the existing house." When the Office of Planning reviewed the revised design, the structure was proposed to remain in the front yard. Yet, the Office of Planning approved the revised design based on the Petitioner's assertion that grading prevented him from moving the structure.

We also find that evidence in this case as to the extent of the improvements on the Property was relevant on the issue of self-imposed hardship. The size and location of the existing pool, tennis court/basketball court and soccer field have otherwise reduced the available locations for the proposed pool house/garage. The Petitioner was clear in his testimony that at the time of the pool installation, he did not have the financial resources to build a pool house. The case law as set forth *supra* restricts this Board from considering economic reasons as a basis for finding 'practical difficulty'. As the *Rotwein* Court, citing *Cromwell,* aptly stated: "every person requesting a variance can indicate some economic loss." *Id.* at 732-33 citing *Cromwell* at 715.

For the foregoing reasons, the Petitioner's request for variance is denied.

ORDER

THEREFORE, IT IS THIS 22nd day of February, 2016, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Variance seeking relief from Section 1A09.7.C.2.e and 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a proposed accessory structure (pool house) located in the front yard in lieu of the required side or rear yard, be and the same 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

Maureen E. Murphy

Benfred B. Alston

Benfred B. Alston

IN THE MATTER OF RICHARD M. FOLIO, Legal Owner/Petitioner 6200 Glen Falls Road Reisterstown, MD 21136	*	BEFORE THE BOARD OF APPEALS OF
Re: Petition for Variance for Pool House In Front Yard in lieu of Side Yard	*	BALTIMORE COUNTY
	*	Case No. 14-185-A

* * * * * * * * * * *

DISSENT

As stated by the majority opinion in this matter, the Board is guided by the holding provided by the Court of Special Appeals in *Cromwell v. Ward,* 102 Md. App. 691 (1995). In requiring a finding of "uniqueness," the Court of Special Appeals in *Cromwell* referred to the definition of "uniqueness" provided in *North v. St. Mary's County*, 99 Md. App. 502, 514 (1993):

> 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. In respect to structures, it would relate to such characteristics as unusual architectural aspects in bearing or parting walls.

Cromwell at 710.

As also noted on the majority opinion, when comparing the property at issue with other properties to determine 'uniqueness,' the terms 'area', 'neighborhood' and district have all been used interchangeably. (*Easter v. Mayor & City Council*, 195 Md. 395, 400 (1950) citing *Rathkopf, Zoning, 2d Ed.*, p. 215); *Marino v. City of Baltimore*, 215 Md. 206, 219 (1957); *Chesley v. Annapolis*, 933 A.2d 475, 176 Md. App. 413 (Md. App., 2007). However, I am not convinced the term "area" is confined to one's immediate neighbors, nor do I interpret the law to imply that if two neighbors share

a topographical characteristic, that such a characteristic cannot be considered "unique" when employing the *Cromwell* analysis. In *Umerly v. People's Counsel for Baltimore County*, 108 Md. App. 497 (1996) in commenting on the Board of Appeals failure to make an evidentiary finding regarding "uniqueness", the Court of Special Appeals described "uniqueness" as when the "peculiarity of the property causes the zoning provision to have a disproportionate effect on the property." *Id. at 506*

While testimony was given that other lots in close proximity to the Petitioner's property shared the same steep slopes noted by the Petitioner, properties as near as directly across the street, did not. Consequently, I dissent in the majorities finding that the subject property is not "unique". However, I concur with the majorities finding regarding a lack of "practical difficulty, and consequently, concur with the majority's final decision denying the requested variance relief.

February 22, 2016
Date

Andrew M. Belt