

IN THE MATTER OF	*	BEFORE THE
JAMES AND CAROL ANN MCBRIDE - LEGAL	*	BOARD OF APPEALS
OWNERS AND PETITIONERS FOR	*	OF
VARIANCE ON THE PROPERTY	*	BALTIMORE COUNTY
LOCATED AT 2909 RITCHIE AVENUE	*	CASE NO: 17-270-A
15 TH ELECTION DISTRICT		
7 TH COUNCILMANIC DISTRICT		

* * * * *

OPINION

This matter comes before the Board as a *de novo* appeal from an opinion dated June 14, 2017, by Administrative Law Judge John E. Beverungen, granting a two part variance request. In that matter, as now before the Board of Appeals (CBA), the Petitioners are requesting variance relief from Baltimore County Zoning Regulations (BCZR), Section 1B02.3C.1. The Petitioners want to build a one story addition. Section 1B02.3C.1 requires that there be a side yard setback of 10' and a rear setback of 30'. The request is to permit a 5' side setback for the addition, and a 10' rear setback to accommodate a garage which was present when the Petitioners purchased the property in 2016.

There are two sets of legal principles that are operative. The first is traditional Baltimore County zoning law regarding variances as set forth in *Cromwell v. Ward*, 102 Md. App. 691 (1995). The second is the American with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*, the Fair Housing Amendments Act (FHAA) 42 U.S.C. § 3610, *et seq.*, and the Maryland Discrimination in Housing Act, Ann. Code of Md., State Gov't. Art., § 20-701 through 20-710, all of which require that a local jurisdiction's policies and procedures, including zoning requirements, must make reasonable accommodation for persons with disabilities.

The McBrides have three foster sons who have been with them for over two decades.

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Each son is disabled within the meaning of the ADA. In particular, the evidence established that their son Nicholas, who has lived with the McBrides for approximately 30 years, suffers from a degenerative neurological and seizure disorder as well as significant cognitive impairments. His condition began to worsen shortly after the McBrides moved into their Ritchie Avenue home. He can no longer take care of his most minimal daily needs. He needs assistance with such basic tasks as dressing, eating, brushing his teeth, using the toilet, and washing his face. He does not speak. He is confined to a wheelchair, and his condition will not improve. The evidence established that the house is not presently suited for Nicholas' care. There is not a large enough bathroom on the first floor to handle his wheelchair. The addition would include a new bathroom able to be used by Nicholas as well an associated bedroom for Nicholas himself. Importantly, the addition would also provide increased storage space for the substantial medical supplies which Nicholas requires. These supplies were described in detail at the CBA hearing and are outlined in Petitioners' Counsel's Memorandum submitted as part of the Petition. Mrs. McBride testified that without the side yard addition, it will be impossible to care for Nicholas in the home, and he will have to be institutionalized. This testimony was corroborated by Nicholas' service coordinator from the Kennedy Krieger Institute. The CBA accepts this conclusion without question.

The garage that was built 10' from the rear lot boundary in violation of the 30' setback requirement was constructed before the McBrides purchased the house. The garage and covered walkway to the house provide a much needed sheltered and level area that permits Nicholas to come from the garage to the house by wheelchair.

The Protestants, Carolyn and Joseph Ducar, live next door to the McBrides. They

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believe that the addition can be added to the house without requiring a variance. They have submitted a schematic which purports to show an addition with the same square footage but without necessitating the variance. The McBrides' builder testified that while it was not impossible to shift the orientation of the addition as suggested by the Ducars, such a shift would be substantially more expensive, require extensive plumbing changes, and would make the roofline quite architecturally complicated. We accept the testimony that the alternative suggested by the Ducars is not a practical alternative. Additionally, we saw aerial photographs which showed many houses throughout the neighborhood and larger area surrounding encroaching on the side yard setback and many garages and sheds placed within the 30' setback. The Ducars do not contest the rear variance.

Under *Cromwell*, there is a two-step process to determine if a variance is warranted. First, the petitioner must demonstrate that the property is unique in relation to the surrounding properties and this uniqueness is what necessitates variance relief. Secondly, the petitioner must show that without the requested relief, the petitioner will experience a practical hardship not of his/her own making. 102 Md. App. at p. 694-95. In this instance, the *Cromwell* standard is influenced by the ADA and its associated federal and state statutes cited above. In other words, in making a zoning decision, local zoning authorities must interpret the zoning principles to also reasonably accommodate a person with disabilities. *See e.g. A Helping Hand, LLC v. Baltimore County*, 515 F.3d 356, 361 (4th Cir. (Md.) 2008); *Smith-Berch, Inc. v. Baltimore County*, 68 F.Supp.2d 602, 618 (D.Md. 1999) (both holding that the ADA applies to zoning practices). *See also* Ann. Code of Md., State Govt Art. § 20-706(b)(4) (indicating that under Maryland law, the disabled are entitled to “. . . reasonable accommodations in rules, policies,

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practices, or services when the accommodations may be necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling”.)

In this case, the lot is somewhat unusual in that it is four lots with only one structure whereas most of the other lots in the subdivision are on two or three individual lots. Also, without the addition as proposed by the McBrides, they will incur significant practical hardship, making care for their foster son all but impossible. The situation is not of their own making in that Nicholas’ condition began to deteriorate after they purchased the house. Accordingly, we find that the *Cromwell* standards are satisfied.

If there is any doubt about the traditional variance requirements having been met, those doubts are addressed in their entirety by the proven need to care for Nicholas. It is difficult to deny that his maintenance requires extraordinary efforts, and those efforts are substantially and reasonably accommodated by granting the variance as proposed by the McBrides. Accordingly, to the extent that the *Cromwell* standards are viewed as having been relaxed, and we do not suggest that they have, it is because of the requirements of the ADA, the FHAA, and Maryland’s Discrimination in Housing Act.

CONCLUSION

For these reasons, we are granting the two variance requests as submitted by the Petitioners.

ORDER

THEREFORE, IT IS THIS 2nd day of December, 2017 by the Board of Appeals of Baltimore County

ORDERED, that the Variance to permit a side yard setback of 5' in lieu of the required 10' for a one story addition to the existing dwelling at the subject property is **GRANTED**; and

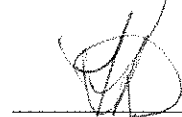
IT IS FURTHER ORDERED that the variance to grant a 10' rear yard setback in lieu of the required 30' setback for the existing garage at the subject property is **GRANTED**.

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*.

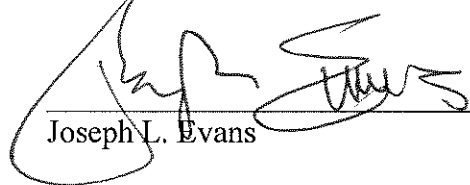
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew M. Belt, Chairman



Kendra Randall Jolivet



Joseph L. Evans



Board of Appeals of Baltimore County

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December 4, 2017

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Disability Rights Maryland
1500 Union Avenue, Suite 2000
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Joseph and Carolyn Ducar
2907 Ritchie Avenue
Baltimore, Maryland 21219

RE: In the Matter of: *James and Carol Ann McBride*
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Dear Messrs. Wilpone-Welborn and Ducar:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

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,

A handwritten signature in cursive script that reads "Sunny Cannington Hay".

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: James and Carol Ann McBride
Denise Ducar
Glenn Weimer
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Office of People's Counsel
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