

IN THE MATTER OF
BUSH RIVER, LLC – LEGAL OWNERS
AND PETITIONERS FOR VARIANCE
ON THE PROPERTY LOCATED AT
4813 RIDGE ROAD

14TH ELECTION DISTRICT
6TH COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case Nos. 18-136-A

* * * * *

OPINION

This matter comes before the Board of Appeals of Baltimore County as a *de novo* appeal of the Opinion and Order of the Administrative Law Judge, John E. Beverungen, dated January 24, 2018. The Petition for Variance was filed by Petitioner, Bush River, LLC, the legal owner of the subject property. This Petition seeks Variance Relief from §1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed single family dwelling with a side yard set back of 8 feet and a sum of side yard set backs of 23 feet in lieu the minimum required 10 feet and some of 25 feet.

A hearing was held before this board on April 17, 2018 and was publically deliberated on June 13, 2018. A site plan was included as evidence before the Board and marked as Exhibit 1. Glenn Grasso and Paul Fortier appeared in support of the Petition. Tamir Ezzat also testified on behalf of the Petitioners. The Petitioners appeared without counsel. Neighbor, Richard Livering and Karen Livering appeared as a Protestants in opposition of the proposed Variance Relief.

FACTS/BACKGROUND

The site in question is approximately 10,000 square feet and zoned DR3.5. In 2006 in Case Number 06-204-A, Deputy Zoning Commissioner, John V. Murphy granted a Variance to approve the construction of a single family dwelling for this site on a lot 50 feet wide in lieu of 70 feet. The

property in question is currently unimproved and the Petitioner again proposes to construct a dwelling on the lot. In order to accomplish this goal, a Petition for Variance is required. In the previous 2006 zoning request, the Deputy Zoning Commissioner denied a variance for a sum of side yard set backs of 22 feet in lieu of 25 feet. The Petitioners are now requesting a 23 feet in lieu of the required 25 feet. In reaching his decision on the previously requested Variances, Deputy Zoning Commissioner Murphy, stated the following:

I further find that strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. The lot is 60 feet wide and there apparently is nothing the petitioners can do to buy more property on either side to reduce or eliminate the variance.

However, the request for variance for the sum of the side yard set backs is another matter, the petitioner would only have to narrow the house width 2.5 feet in order to eliminate the request for the sum of the side yard set backs. Although I know this will not be easy, I believe this can be done and by lengthening the house achieve the same square footage needed by the petitioners. I have every confidence that Mr. Ezzat can do this reasonably. Consequently, I will deny this variance.

DISCUSSION/ANALYSIS

A variance request involves a two-step process summarized as follows:

1. it must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness and peculiarity must necessitate variance relief; and
2. if variance relief is denied the petitioner will experience a practical difficulty or hardship. *Cromwell v. Ward*, 102 Md. App 691 (1995).

As previously discussed, the Deputy Zoning Commissioner in 2006 approved the lot width of 50 feet taking into account the two-step analysis set-forth in *Cromwell*. However, Deputy Zoning Commissioner Murphy found that the request for variance for a sum of side yard set back of 22 feet did not meet the criteria for variance found in *Cromwell*. As is evidenced by the language of the Deputy Zoning Commissioner Murphy's 2006 opinion, he specifically considered the Petitioner's request for sum of side yard set backs of 22 feet and did not find that it constituted "practical difficulty or hardship." This Board finds that the 23 feet in lieu of 25 feet request in the

current petition is no different from their previous request and is barred by the doctrine of *res judicata*. Under Maryland law, a final agency determination is entitled to preclusive effect. *Essilinger v. Baltimore City* 95 Md. App. 607, 621 (1993). See *also, Seminary Galleria, LLC v. Dulaney Valley Improv. Assn.*, 192 Md. App. 719 (2010). In the testimony heard before this Board in support of the variance at issue, this Board is not satisfied that any substantial change in circumstances or law would apply to require an exception to the tenets of *res judicata*. Consequently, the Petitioner's Request for Variance is denied.

ORDER

THEREFORE, IT IS THIS 10th day of October, 2018 by the
Board of Appeals of Baltimore County

ORDERED that the Petition for Variance seeking relief from §1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a proposed single family dwelling with a side yard setback of 8 feet and a sum of side yard setbacks of 23 feet in lieu the minimum required 10 feet and some of 25 feet be and the same is hereby **DENIED**; and it is furthered

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*.

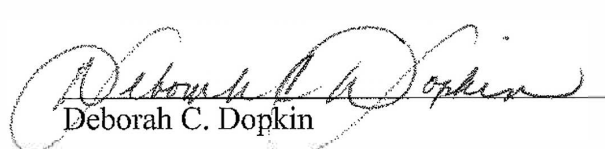
**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew M. Belt, Panel Chairman



Kendra Randall Jolivet



Deborah C. Dopkin



Board of Appeals of Baltimore County

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October 10, 2018

Tamir Ezzat, Agent
Bush River, LLC
P.O. Box 43576
Baltimore, Maryland 21236

RE: In the Matter of: *Bush River, LLC*
Case No.: 18-136-A

Dear Mr. Ezzat:

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" with a small "Hoy" written at the end.

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: Glenn B. Grasso
Tamir Ezzat
Richard and Karen Livering
Paul Fortier
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law