

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S/S Liberty Road, 350' NW of		
Falls Run Road	*	ZONING COMMISSIONER
(10407 Liberty Road)		
2 nd Election District	*	OF
4 th Council District		
	*	BALTIMORE COUNTY
Nadine Knoche		
Petitioner	*	Case No. 2009-0315-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Nadine Knoche. The Petitioner requests variance relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a 1 foot side yard setback in lieu of the required 50 feet, where the existing non-conforming setback is 19.4 feet, to permit a front yard setback of 13 feet in lieu of the required 50 feet, where the existing non-conforming setback is 25 feet, and to permit a front yard setback for an existing car port of 8 feet which is more than the 25% extension of the minimum required 50 feet pursuant to Section 301.1 of the B.C.Z.R.¹. The subject property and requested relief are more particularly shown on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing for this matter and in support of the requests were Nadine Knoche, property owner, and Arnold Jablon, Esquire, of Venable, LLP. There were no Protestants or other interested persons present.

Testimony and evidence proffered disclosed that the subject property is an irregularly

¹ The Petitioner contends that in the alternative, pursuant to Section 1A04.3.B.4 of the B.C.Z.R., no variances are necessary under these circumstances because the subject plot was recorded and approved by the Office of Planning prior to the enactment of the Zoning Regulations in 1975. However, due to lack of records from the Office of Planning at the time the plot was recorded, there is insufficient evidence to support this contention and the Zoning Commissioner is reluctant to grant approval in this regard.

shaped lot located on the south side of Liberty Road and northwest of Falls Run Road in the Randallstown area of Baltimore County. The subject property contains a gross area of 1.92 acres, more or less, zoned R.C.5, and is improved with a single-family dwelling. Testimony also revealed that the subject dwelling was constructed in 1931 by the Petitioner's great-grandfather, a stonemason by trade, with fieldstone. As way of background, the subject property is part of a larger 70-acre tract of land purchased prior to 1930 and which serves as the 'family compound' to this day. Fifty acres of farm fields within this large tract of land is in the process of being put into the Maryland Land Preservation Trust by the family. The portion of the property to be placed into said trust is blue-lined on Petitioner's Exhibit 6. Only 20 acres of this tract is improved with dwellings and associated accessory uses. The Petitioner's aunt neighbors the subject property to the north while the Petitioner's father neighbors the subject property to the west². See Petitioner's Exhibits 2 through 6. The subject property is accessible via two driveways connected to Liberty Road; one driveway connected to Falls Run Road and is served by a private well and septic system. See Petitioner's Exhibit 6.

The Petitioner's requests for variance arises out of a desire to make additions to the north and west sides of the dwelling and to bring the existing 1931 structure and layout of the home into compliance with the B.C.Z.R. The Petitioner intends to add a bathroom and bedroom on the northern portion of the dwelling for the use of Ms. Marie Williams, the Petitioner's aunt. This addition would result in a 1-foot side yard setback in lieu of the required 50 feet. There are no plans to include a kitchen in this addition. The desired addition to the western portion of the home consists of enclosing a part of the existing carport in order to create a laundry room. This addition would result in an extension, by more than 25%, of the minimum required setback of 50

² The Petitioner's father, Rev. H. Gerard Knoche, Jr., is Bishop of Delaware-Maryland Synod of the Evangelical Lutheran Church in America (ELCA).

feet to 8 feet. Both of these proposed additions would be compatible with the existing aesthetics of the principal dwelling as evidenced by the architectural renderings marked as Petitioner's Exhibit 7.

Testimony was further proffered identifying the unique nature of the subject property. The principal dwelling was constructed in 1931, as evidenced by the Maryland Department of Assessments and Taxation Real Property Data Search contained within the case file, and was a property of record long before that time. Thus, the layout of the existing structure precedes the enactment of the B.C.Z.R. and was not designed with such regulations in mind. Moreover, the metes and bounds of the record plot serve as a constraint to any desired growth. It was also offered that subject property is unique because the surrounding landscape, including numerous trees and open farmland, dictates that the only appropriate locations for the additions are as proposed. Moreover, the Petitioner opines that these additions and variance requests are compatible with the spirit and intent of the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments generally indicate no opposition or other recommendations concerning the requested relief. The Petitioner also indicated that her family, the other residents of the 'family compound,' is in favor of the proposed additions and variance requests.

Section 307.1 of the B.C.Z.R. provides the standard by which variances must be adjudged. This section enumerates that variances shall be granted only when "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." Further, the granting of a

variance request must be compatible with the spirit and intent of the regulations and must not be detrimental to the health, safety, or general welfare of the public.

Based upon the testimony and evidence presented, I am persuaded to grant the variances requested. In my judgment, the property is unique given the age of the record plot and primary structure. Further, the only appropriate site for the additions are as proposed on the site plan submitted into evidence as Petitioner's Exhibit 1. Moreover, strict adherence to the regulations would constitute a practical difficulty on the Petitioner in that she would be denied a reasonable use of her property. This common law right to use one's property in a manner so as to realize its highest and best use in accordance with Maryland law was discussed in *Aspen Hill Venture v. Montgomery County Council*, 265 Md. 303 (1972). The requested variances are proper for the reasons set forth above. No increase in residential density beyond that otherwise allowable by the zoning regulations will result by granting these requests. Moreover, the proposed additions will be compatible in size and design with the primary structure.

Therefore, I find that the variance requests can be granted in strict harmony with the spirit and intent of the said regulations, and in such a manner as to grant relief without injury to the public health, safety or general welfare. The granting of relief will not be out of character for the surrounding rural-residential area. Thus, I find that these variance requests can be granted as to meet the requirements of 307.1 of the B.C.Z.R, as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995)

Pursuant to the advertisement, posting of the property and public hearing on the Petition held, and for the reasons given above, the requested Variance shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of July, 2009 that the Petition for Variance from Sections 1A04.3.B.2.b and 301.1 of the

Baltimore County Zoning Regulations (B.C.Z.R.) to permit a 1 foot side yard setback in lieu of the required 50 feet, a front yard setback of 13 feet in lieu of the required 50 feet, and a front yard setback of 8 feet for the existing car port, which is more than the 25% extension of the minimum required 50 feet, in accordance with Petitioner's Exhibit 1, be and are hereby GRANTED, subject to the following condition:

- 1) The Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at her own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

Any appeal of this decision must be made within thirty (30) days of the date hereof.

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County

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