

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E side of Shenandoah Avenue; 80 feet		
SE of First Avenue	*	DEPUTY ZONING
13 th Election District		
1 st Councilmanic District	*	COMMISSIONER
(3505 Shenandoah Avenue)		
	*	FOR BALTIMORE COUNTY
Richard Kotlas		
<i>Petitioner</i>	*	CASE NO. 2010-0328-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Richard Kotlas. Petitioner is requesting Variance relief from Sections 402.1.A and 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a side yard setback of 12 feet in lieu of the required 15 feet; front and rear yard setbacks of 20 feet and 28 feet in lieu of the required 25 feet and 30 feet respectively; and for such further relief as the nature of this petition and the specific conditions of the subject property may warrant in order for the proposed conversion of the existing single-family dwelling into a duplex or semi-detached building to comply with the B.C.Z.R. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Petitioner Richard Kotlas and Dwight Little with Little & Associates, Inc., the professional engineer who prepared the site plan, and Aaron Kensinger, also with Little & Associates, Inc. There were no Protestants or interested citizens in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is square-shaped and consists of approximately 0.23 acre, more or less, or 10,000 square feet, zoned D.R.5.5. The property is located in the Lansdowne area of Baltimore County west of the Baltimore-Washington

Parkway on the east side of Shenandoah Avenue with ingress/egress from same. The subject property is improved with a single-family dwelling built in 1947, which contains approximately 1,118 square feet according to the Real Property Data Search printout marked and accepted into evidence as Petitioner's Exhibit 2. Photographs of this dwelling were received following the public hearing at the request of the undersigned and are contained within the case file. Through testimony and the submitted photographs, it was revealed that the interior of the subject dwelling was in a state of severe disrepair when Petitioner purchased it and was in need of substantial exterior repairs as well. The property is accessible via a concrete driveway from Shenandoah Avenue that leads to a one-story garage at the rear of the property. This driveway and garage provide off-street parking for the residence. Additional testimony indicated that the home was in foreclosure when purchased by Petitioner.

At this juncture, Petitioner proposes to convert the existing single-family dwelling on the subject property into a duplex or semi-detached two-family structure. This conversion is desired to create a living area for Petitioner, who often commutes from Massachusetts to Baltimore County for his job in home renovation, as well as to generate income through the rental of the second dwelling area. Petitioner noted that he does not live in Baltimore County full-time and that utilization of the property is preferred over the property remaining vacant while he is not present. It was further revealed that Petitioner would continue with the renovations that have begun subsequent to his purchase of the home in March 2010, in order to provide a two-family duplex and improve the overall appearance of the property.

Conversion of dwellings for residential use is permitted in a D.R.5.5 Zone pursuant to Section 402.1.A if the enumerated requirements of that Section are met. Mr. Little, Petitioner's engineering consultant, explained that the subject property meets the minimum lot requirement of 10,000 feet and the minimum lot width requirement for a duplex (80 feet) or semi-detached

structure (90 feet); the subject property is 100 feet wide. However, the setback requirements for the property at the side, front and rear yards of 15 feet, 25 feet, and 30 feet, respectively, are not met with the current placement of the home. Thus, Petitioner requests variance relief from Sections 402.1.A and 1B02.3.C.1 of the B.C.Z.R. to permit side, front and rear yard setbacks of 12 feet, 20 feet, and 28 feet, respectively, in order to facilitate the conversion of the principal dwelling to a duplex or semi-detached structure.

In support of the requested relief, Mr. Little explained that the subject property is unique and that strict compliance with the Zoning Regulations would result in unreasonable hardship and practical difficulty. He stated that the size of the lot is unique in that it is significantly larger than most of the other lots in the immediate area. Moreover, the fact that the subject dwelling is over 60 years old and demands extensive renovations to render it livable are special circumstances encumbering the property. Mr. Little further explained that because the minimum lot size and width requirements are met for conversion of the dwelling, and the side, front, and rear yard setbacks are deficient by only three feet, five feet, and two feet, respectively, it is within the spirit and intent of the Regulations to grant the requested variance for setback relief. Additionally, he noted that if relief were not granted, hardship would be suffered by forcing complete demolition of the existing dwelling and the erection of another structure in order to strictly comply with the applicable Regulations that permit the proposed conversion. Otherwise, according to Petitioner, the dwelling would likely remain vacant based on the economic infeasibility of rehabilitating the home for single-family use.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments received from the Office of Planning dated June 23 indicate that Shenandoah Avenue is a short (330 feet long), narrow (18 feet wide) residential street that extends from 1st Ave (to the north) to Hollins Ferry Road (to the south). There are eight small, single-

family detached dwellings located along Shenandoah Avenue and all of these dwellings appear to be in good condition except for the Petitioner's dwelling, which is currently being renovated. Shenandoah Avenue is not wide enough to provide on-street parking. The Petitioner's site plan doesn't clearly show how off-street parking will be provided to serve two dwelling units. The Office of Planning does not support the Petitioner's request to convert an existing one-family dwelling into a dwelling for two families for the following reasons:

1. Petitioner's dwelling is not excessively large in size. If granted, the result would be the conversion of a small single-family dwelling into a two-family dwelling with two very small dwelling units in a single-family detached residential neighborhood.
2. Although Petitioner's lot is substantial in size (10,000 square feet) and is larger than the other lots on Shenandoah Avenue, it is not excessively large for a single-family detached dwelling.
3. The request is not within the spirit and intent of the Baltimore County Zoning Regulations. Section 402 (Conversion of Dwellings) stipulates that the converted dwelling must be located on a lot that meets the dimensional requirements shown in the schedule contained in that section. The Planning Office believes it is intended that those requirements must always be met and they should not be modified through the issuance of variances. The 15-foot side yard requirement specified in Section 402 should be enforced.
4. Denial of the request will not cause a practical difficulty upon the property owner and will not be unnecessarily burdensome. The continued use of this property for a single-family dwelling is a reasonable use of the land and the building.

No other adverse comments were received on file.

The determination of a variance request from the Zoning Regulations is governed by Section 307.1 of the B.C.Z.R., as interpreted by the Court of Special Appeals of Maryland in *Cromwell v. Ward*, 102 Md. App. 691 (1995). As indicated by the Court in *Cromwell*, the two-part variance test involves finding that a property is unique and unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would result. Self-inflicted or created hardship is not considered proper grounds for a variance. *Id.* at 707.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, the size of the lot in comparison to the others on the street and the age and location of the existing structure render the subject property unique in a zoning sense. Further, I find that strict compliance with the Zoning Regulations would create a hardship that would result in a denial of a reasonable and sufficient use of the property. Without the special circumstances rendering the subject property in violation of the Regulations, Petitioner would be permitted to convert the subject dwelling into a multi-family duplex as allowed by the Zoning Regulations. Thus, refusing to grant the variance would result in unreasonable hardship and practical difficulty.

I also find this variance request can be granted in strict harmony with the spirit and intent of Section 307.1 of the B.C.Z.R., as interpreted in *Cromwell*, and in such a manner as to grant relief without injury to the public health, safety and general welfare. Although the Office of Planning makes several persuasive points for denial of Petitioner's variance requests and plans for conversion of the property, no evidence was submitted to indicate that the conversion of the dwelling to a two-family dwelling would have any adverse impact to the neighborhood. Further, I disagree with Planning that setback requirements must always be met and that variances should never be issued in this type of case. The setbacks at issue are precisely the type of area regulations contemplated by Section 307.1 of the B.C.Z.R. authorizing variance relief. In addition, it appears that Petitioner's renovations to the primary structure will beautify and improve the aesthetics of the subject property, which is currently in disrepair, thereby benefiting the surrounding community as well. Further, the concrete driveway and one-story garage will provide ample off-street parking to accommodate a two-family dwelling.

Finally, it is of note that no Protestants or citizens came forth at the hearing expressing concerns, nor submitted letters of opposition in regard to Petitioner's requested relief and his plan to convert the dwelling to a two-family dwelling.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 21st day of July, 2010 by this Deputy Zoning Commissioner that Petitioner's Variance requests from Sections 402.1.A and 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a side yard setback of 12 feet in lieu of the required 15 feet, and front and rear yard setbacks of 20 feet and 28 feet in lieu of the required 25 feet and 30 feet respectively, be and are hereby **GRANTED**, subject to the following which are conditions precedent to the granting of the relief:

1. Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz