

IN RE: PETITION FOR ADMIN. VARIANCE * BEFORE THE
N Side of Hopkins Road @ Corner of * OFFICE OF ADMINISTRATIVE
E Side of Dorking Road * HEARINGS FOR
9th Election District * BALTIMORE COUNTY
5th Councilmanic District
(300 Hopkins Road) * CASE NO: 2011-0302-A
Christiane M. Rothbaum
Legal Owner

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Christiane M. Rothbaum, the legal owner of the subject property. Petitioner is requesting Variance relief under Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an existing dwelling and proposed addition with a side street setback of 6 feet in lieu of minimum required 10 feet, and a rear yard setback of 35 feet in lieu of minimum required 50 feet. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of May 2, 2011. On April 27, 2011, a Formal Demand for Hearing was filed by Jennifer Helfrich, President, on behalf of Rodgers Forge Community, Inc. The hearing was subsequently scheduled for Friday, June 17, 2011 at 10:00 AM in Room 104 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland. In addition, a sign was posted at the property on May 29, 2011 and an advertisement was timely published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

Appearing at the requisite public hearing in support of the variance request was Christiane M. Rothbaum, Petitioner, and Joseph D. McDowell, who prepared the site plan and is assisting the Petitioner with the permitting process. The Petitioner was represented by Francis Borgerding, Esquire. Letters and e-mails of support were received prior to the hearing from a number of neighbors: Art Buist, Esquire of 234 Overbrook Road, William and Chenghui Wu Watkins of 8400 Greenspring Avenue (landlords of 302 Hopkins Road), and Lee and John Ohnmacht of 301 Dunkirk. A number of residents also appeared at the hearing on behalf of the Petitioner. In addition, several citizens appeared as Protestants in opposition to the variance request. Letters, e-mails and petitions in opposition to the request were also received, and, likewise, are contained within the file. David Lampton, a resident and member of the Bar, coordinated the Protestants' presentation.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse ZAC comments received from any of the County reviewing agencies.

Joseph McDowell, a construction and design consultant, was called to testify and, after questioning, was accepted as an expert witness in construction design, the preparation and submittal of site plans, particularly for zoning and variance requests.

The witness related that he was familiar with the subject property and had been called into the matter by Petitioner's contractor. He described the property as being constructed in 1937, zoned DR 10.5 on a lot consisting of approximately 0.866 acres (3,774 square feet +/-). He also noted that the lot upon which the Petitioner's residence is constructed, tapers as it moves towards the rear of the lot. The witness then described in some detail the renovation project, which, in his opinion, necessitates the requested variance. In essence, Petitioner wishes to create a powder

room in what, up to now, has been part of the kitchen. To do so, Petitioner would lose the space presently taken up by her refrigerator. To recapture that space, Petitioner wishes to extend out of the back of the kitchen in a space measuring 8 foot 6 inches by 8 foot 6 inches, in order to relocate the refrigerator and add cabinets. He related that Petitioner suffers from physical difficulties, resulting in incontinence. Given her age and condition, the powder room on the first floor is, in her determination, a much needed facility. He presented the floor plan of the proposed improvements (Petitioner's Exhibit 1). The floor plan became the subject of much discussion in both cross and redirect examination regarding various alternatives for the relocation of the proposed powder room. It is Mr. McDowell's conclusion and expert opinion that the only and best location for the powder room was as he had proposed in Petitioner's request, more so since the plumbing network needed was already located on the kitchen side of the house.

The witness then addressed the prerequisites for the granting of a variance. He opined that the subject structure should be considered "unique" as it was built prior to the imposition of zoning regulations and was nonconforming at the instant the DR 5.5 zoning requirements were applied to it. Moreover, he noted that the property is a corner lot, tapers along its length, and is set at an angle. He observed that many such additions already exist in the Rogers Forge community and that without the variance relief this unique situation has a disproportionate effect on the Petitioner, as nothing can be added to the property. Specifically, absent the requested variance, the construction of the powder room would destroy the functionality of the kitchen, making the requested extension a necessity. Given her physical situation, the inability to add the powder room as proposed could leave the Petitioner with little choice of options, and could result in her relocation.

Mr. McDowell described at some length his examination of the Rogers Forge neighborhood, which revealed a number of extensions such as that being requested (Petitioner's Exhibits 9A and B).

Finally, the witness noted the history of Petitioner's care for her property and the use by her in previous projects of high quality materials; and opined that the proposed variance would have no harmful effect on the health, safety, and welfare of the surrounding neighborhood.

The Petitioner then testified on her own behalf. She purchased this home in 1987. She described her physical difficulties, including surgery in 2008, and related that her doctor advised that she construct a powder room on the first floor of her residence (Petitioner's Exhibit 8). She testified that, acting upon that advice, she located a contractor who had brought Mr. McDowell in for consultation. She stated her belief that there was no location in her home for the powder room other than that suggested by Mr. McDowell that would provide a practical alternative, and that, in her unique situation, the failure to grant the variance requested would have a disproportionately negative effect on her. She described her obvious love for the neighborhood and her pride in how she maintained her home. She strongly asserted that her request would not adversely affect the welfare of the community.

A number of neighbors testified on behalf of the Petitioner's request. The individual names of these witnesses are contained on the Petitioner's sign in sheet which is a part of this file. All agreed that the Petitioner took magnificent care of her home, and that it was a credit to the community. All believed that, given her medical situation, she should be granted the variance. All noted that numerous properties in Rogers Forge which now have the extension Petitioner would like to construct. The additional letters, e-mails and petitions in support of Petitioner's request are also included in the file.

I then heard from Jean Duval, a 41 year resident of Rogers Forge and a member of the community association's architectural committee. She testified that although some extensions such as desired by Petitioner exist in the community, they are primarily part of the original construction of those dwellings. She asserted that she does not recall the organization ever approving a variance request to allow construction of an extension of a home in the community. She stated that a community association guidelines do not in fact allow for new enclosed projects. She discussed her concerns that new extensions would adversely affect light and air and therefore are harmful to the quality of life enjoyed the residents of Rogers Forge. She noted that the Association has consistently opposed these types of variances. She asserted that Petitioner's property itself was not unique in relation to the surrounding area and that a powder room could be constructed in Petitioner's home without the need for an extension of the building.

Carol Zielke, a 36 year resident of Rogers Forge and Roxanne Rinehart, another resident, also spoke in opposition to the request. Finally, David Lampton, echoing previous Protestants' comments and adding his concern that the approval of the requested variance could begin a "slippery slope" that would adversely effect the quality of life in the Rogers Forge community over the long term.

On its face, this matter appears to be simple; balancing the arguably logical request of a homeowner to appropriately alter her home in response to a pressing personal medical need. It is clear from all the testimony that the Petitioner is an admirable homeowner and that her care for her residence stands as an example and credit to the Rogers Forge community. It is also true that, for whatever reason, many of the homes in Rogers Forge have extensions such as that desired by the Petitioner.

Unfortunately for the Petitioner, the reality of this case is otherwise; in order to construct her desired addition, Petitioner must obtain a variance. Either she qualifies under present statutory and case law, or she does not.

The obtaining of the variance governed by Section 307.1 of the B.C.Z.R. as well as well-settled case law. These requirements are purposely strict in nature, difficult to satisfy and reflect the public policy of severely restricting the granting of variance relief. The seminal case on the subject, *Cromwell v. Ward* 102 Md. App. 691 (1995), states the prevailing rule that “variances are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances....a variance should be strictly construed. Cromwell Id at 700. Section 307.1 of the zoning regulations permits variances to be granted “....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. Cromwell requires that “uniqueness” first be established before the factor of “practical difficulty” is even addressed. Cromwell Id at 698. In requiring a prerequisite finding of “uniqueness” the Court defined the term and stated:

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...Id. At 710.

Only thereafter, do we address the issue of practical difficulty. 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 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.

Anderson v. Bd of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

In considering the testimony and evidence presented, I am not persuaded that the Petitioner has established the “uniqueness” as regards the subject property located at 300 Hopkins Road, as called for in Section 307.1 and defined and discussed in *Cromwell v. Ward*, supra. The bar as to “uniqueness” is purposely raised high and the Petitioner has not succeeded in reaching it. The properties in Rogers Forge are relatively uniform; that uniformity provides much of the character and attraction of the community. Petitioner’s property simply does not differ from that uniformity in any significant way. Therefore, discussion of the “practical difficulty” is unnecessary in this opinion.

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

THEREFORE, IT IS ORDERED this 30th day of June, 2011 by this Administrative Law Judge that Petitioner's Variance request from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an existing dwelling and proposed addition with a side street setback of 6 feet in lieu of minimum of required 10 feet, and a rear yard setback of 35 feet in lieu of minimum required 50 feet, be and is hereby DENIED.

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

Signed _____
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:pz