

IN RE: PETITION FOR VARIANCE
S side of Murdock Road, 110 feet W
of c/l of Heathfield Road
9th Election District
5th Councilmanic District
(323 Murdock Road)

Frank C. Meyer, Jr. and Kathleen C. Long
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2012-0012-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by the legal owners of the subject property, Frank C. Meyer, Jr. and Kathleen C. Long. Petitioners are requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an enclosed addition (sunroom) with a setback of 37 feet in lieu of the 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 Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Petitioners Frank C. Meyer, Jr. and Kathleen C. Long. The record in this case reflects that the subject property was properly posted and advertised as required by the Baltimore County Zoning Regulations. J. Carroll Holzer, Esquire appeared on behalf of a number of citizen protestants, whose names appear on the sign in sheet which has been made a part of the file.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated August 22, 2011, in which, failing to find any requisite practical difficulty in the Petitioners’ request and noting a denial of a similar request in 1995, recommended denial of the instant variance Petition. The

property currently has a screened porch. The Petitioners request enclosing said porch with glass walls which would convert the porch into a rear addition to the house. Permitting a rear addition could possibly allow for neighboring properties to do the same which would threaten the architectural uniformity of the Rodgers Forge community. The housing stock in Rodgers Forge is very dense and open space is limited. As stated by the Office of Planning, this property was the subject of a previously filed similar Petition for Variance to allow an enclosure in 1995 and was denied. Several nearby properties in Rodgers Forge have also come in for rear addition and were also denied, the latest in 2011.

The Petitioners long testified as to the description of the existing screened-in sunroom which existed when they purchased the property. Unfortunately, over the years it has deteriorated and is in need of replacement and/or repair. They wish to enclose the sunroom in order to use it in the spring and fall. Their request will not change the already existing footprint of the structure and they believe it will not only improve the use of the property, but will be visually less obstructive than the current sunroom and will enhance the value of their property.

Protestant Carol Zielke testified in opposition to the requested variance. She is an officer in the Rodgers Forge Community Association and shares a common wall with the site in question. She is concerned that the proposed permanent construction will adversely affect the air flow and light to the rear of the property. Moreover, she did not believe that the Petitioners' property was in any way unique in the community, such as to qualify it for a variance. She concluded that she had also testified in opposition when prior residents had unsuccessfully tried to obtain a variance in 1995.

There is no question as to the positive motivation of the Petitioners in wanting to address a decaying sunroom in their residence by upgrading the same space as a permanent enclosed

addition. It is also true that, for whatever reason, many of the homes in Rodgers Forge have extensions such as that desired by the Petitioners.

Unfortunately, for the Petitioners, the reality of this case is otherwise; in order to construct their desired addition, Petitioners must obtain a variance. Either they qualify under present statutory case law, or they do 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 Petitioners 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 Petitioners have not in any way established the “uniqueness” as regards the subject property, 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 Petitioners have 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. Petitioners’ 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 Petitioners, I find that Petitioners’ variance request should be denied.

THEREFORE, IT IS ORDERED this 2nd day of September, 2011 by this Administrative Law Judge that Petitioners’ Variance request from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an enclosed addition (sunroom) with a setback of 37 feet in lieu of the 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