

<b>IN RE: PETITION FOR ADMINISTRATIVE</b>	*	BEFORE THE
<b>VARIANCE</b>		
NE side of Beechwood Avenue, 570' NW	*	OFFICE OF ADMINISTRATIVE
of the c/line of Summit Avenue		
1 <sup>st</sup> Election District	*	HEARINGS FOR
1 <sup>st</sup> Councilmanic District		
<b>(114 North Beechwood Avenue)</b>	*	BALTIMORE COUNTY
Bradford D. Harris & Jessica H. Katznelson		
<i>Petitioners</i>	*	<b>CASE NO. 2012-0098-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Bradford D. Harris and Jessica H. Katznelson, legal owners of the subject property. Petitioners request Variance relief from Sections 1B02.3.A.5 and 1B02.3.B of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an addition with a 9 foot side yard setback in lieu of the minimum required 15 feet. The subject property and requested relief are more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the hearing on behalf of the Petitioners was Stephen Price, the builder and contractor that was hired by the property owners to construct the addition on their home which is the subject of this variance request. Appearing in opposition to the Petitioners’ request were adjacent property owners Susan and Gorman Davis who reside at 116 North Beechwood Avenue. The Protestants were represented by J. Carroll Holzer, Esquire.

This matter was originally filed as an Administrative Variance, with a closing date of October 31, 2011. On October 18, 2011, Susan Upman Davis who resides at 116 North Beechwood Avenue, called for a formal hearing on this matter. The hearing was subsequently scheduled for Tuesday, November 15, 2011 at 11:00 AM, in Room 205 of the Jefferson Building,

105 West Chesapeake Avenue, Towson. In addition, a sign was posted at the property and an advertisement was published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

Testimony and evidence offered at the hearing demonstrated that the property which is the subject of this variance request consists of 7,650 square feet and is zoned DR 2. The subject property is improved with an existing one and one half story brick single family dwelling wherein Bradford Harris Jessica H. Katznelson reside with their two small children. The owners of the property are desirous of constructing a 7 foot x 20 foot addition on the north side of their dwelling adjacent to the property owned by Mr. and Mrs. Davis. The details of the small addition are depicted on Petitioners' Exhibit 1, the site plan submitted into evidence. In addition, as is shown on Petitioners' Exhibit 3, a schematic drawing of the addition was submitted into evidence further describing the particulars of the proposed improvements on the home owned by the Petitioners.

As stated previously, neither Mr. Harris nor Ms. Katznelson appeared at the hearing. However, their builder and designer, Stephen Price, did appear and offered testimony regarding the project. Mr. Price testified that his clients recently moved to Catonsville from North Carolina and are in the process of renovating the subject dwelling. He has recently installed a new basement rec room in the house and has been asked by the homeowners to construct the addition to allow them to enlarge their small kitchen that is located within the dwelling. In order to proceed with the expansion of the kitchen area, the variance request is necessary in that the newly constructed project will be situated only 9 feet from the side property line, whereas the regulations require a minimum setback of 15 feet.

As stated previously, Mr. and Mrs. Davis, who reside at 116 North Beechwood Avenue, appeared in strong opposition to the Petitioners' request. The Davis' have resided in their

dwelling for the past 40 years and are concerned over the adverse impact that this addition will have on their quiet enjoyment of their home. Mrs. Davis' testified that there exists a drainage problem between the properties. She submitted photographs into evidence depicting puddling and the accumulation of water on her property after heavy rain events. In addition, she testified that these two houses already sit particularly close to one another and any further additions built on the north side of the Petitioners' dwelling would further exacerbate the problems associated with the closeness of these two structures at this time. She would prefer that any addition be constructed on the opposite side of Petitioners' dwelling further away from the home where she resides with her husband. She testified that there was previously a fire in her home which caused the prior owner of the subject property to be very concerned that the fire would spread to his house given that they were only separated by 18.5 feet. She also believes the value of her property will go down with this additional structure being built on her side of the Petitioners' dwelling.

After considering the testimony and evidence offered in support as well as the testimony and exhibits submitted in opposition to the Petitioners' request, I find that the requested variance should be denied. No testimony was offered by the Petitioners as to the uniqueness of the subject property or the practical difficulty or unreasonable hardship suffered in the event the variance were to be denied.

The obtaining of the variance is sought by the Petitioners is 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 Petitioners have 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 Petitioners have not succeeded in reaching it. 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, I find that Petitioner’s variance request should be denied.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County this 22 day of November 2010 that the Petition for Variance seeking relief from Sections 1B02.3.A.5 and 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an addition with a 9 foot side yard setback in lieu of the minimum required 15 feet, be and the same is hereby DENIED.

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

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Signed \_\_\_\_\_  
TIMOTHY M. KOTROCO  
Administrative Law Judge  
for Baltimore County

TMK:pz