

|                                     |   |                             |
|-------------------------------------|---|-----------------------------|
| <b>IN RE: PETITION FOR VARIANCE</b> | * | BEFORE THE                  |
| S/side of North Cove Road, 60' W of |   |                             |
| c/line of East Avenue               | * | OFFICE OF ADMINISTRATIVE    |
| 15 <sup>th</sup> Election District  |   |                             |
| 7 <sup>th</sup> Council District    | * | HEARINGS FOR                |
| <b>(7731 North Cove Road)</b>       |   |                             |
|                                     | * | BALTIMORE COUNTY            |
| Robert LeRoy Spielman               |   |                             |
| <i>Petitioners</i>                  | * | <b>CASE NO. 2012-0210-A</b> |
|                                     |   |                             |
| * * * * *                           |   |                             |

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by Robert LeRoy Spielman. The Petitioner is requesting Variance relief from Section 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a new dwelling with a 25' front setback in lieu of the required maximum 40'. 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.

Appearing at the public hearing in support of the variance request was Petitioner Robert LeRoy Spielman and Scott Chilton, who is assisting the Petitioner in the permitting process. There were no Protestants or other interested parties in attendance. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R., and the file does not contain any letters of opposition or protest.

Testimony and evidence revealed that the subject property is 11,457 square feet (0.263 acres) and zoned DR 5.5. The Petitioner indicated that his kids have left the home and he now desires to "downsize," and plans to construct a modest one floor dwelling on the site, which is now vacant. To do so, Petitioner needs variance relief with regard to the front yard setback from North Cove Road.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. A ZAC comment was received from the Bureau of Development Plans Review, dated March 13, 2012, which indicated the following:

1. The base flood elevation for this site is 8.5 feet [NAVD 88].
2. The flood protection elevation is 9.5 feet.
3. In conformance with *Federal Flood Insurance Requirements*, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.
4. The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the *Baltimore County Building Code* must be followed whereby elevation limitations are placed on the lowest floor (*including basements*) of residential (*commercial*) development.
5. The building engineer shall require a permit for this project.
6. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
7. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the *International Building Code*.

A comment was also received from the Department of Environmental Protection and Sustainability (DEPS) (as required by B.C.Z.R. § 500.14) indicating that the requested relief could be consistent with the applicable Chesapeake Bay Critical Area (CBCA) regulations, provided Petitioner observes certain requirements.

Based upon the testimony and evidence presented, I am persuaded to grant the request for 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. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md 53, 80 (2008).

Petitioner has met this test.

The subject property is unique in that the east side property line converges somewhat near the middle of the lot. This dictated where the Petitioner positioned the home so as to comply with the side yard setbacks, but in doing so it also created the need for front yard setback relief. In addition, Petitioner explained that he didn't want to position the home any closer to Long Cove, so the variance will also allow the home to be located in a more environmentally sensitive location.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship. As noted, Petitioner would be required to locate the structure closer to the tidewater, which increases the risk of casualty.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is amply demonstrated by the lack of community opposition, as well as the absence of comments by County reviewing agencies.

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

THEREFORE, IT IS ORDERED, this 17<sup>th</sup> day of April, 2012, by this Administrative Law Judge that Petitioner's Variance request from Section 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a new dwelling with a 25' front setback in lieu of the required

maximum 40', be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.
2. The Petitioner must comply with the flood requirements reflected in the Bureau of Development Plans Review ZAC comment, dated March 13, 2012, a copy of which is attached and made a part hereof.
3. The Petitioner must comply with the DEPS ZAC comment, dated April 16, 2012, a copy of which is attached and made a part hereof.

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

JEB:dlw

Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County