

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
SW side of Calder Castle Court @ the		OFFICE OF ADMINISTRATIVE
Southern Corner of Sam Hopkins Court	*	
7 th Election District		
3 rd Council District	*	HEARINGS FOR
(19007 Sam Hopkins Court/ 605 Calder Castle Court)	*	BALTIMORE COUNTY
Ellwood Building Corporation	*	
<i>Petitioner</i>		CASE NO. 2012-0211-A

* * * * *

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 Ellwood Sinsky, Esquire, on behalf of Ellwood Building Corporation (the “Petitioner”). The Petitioner is requesting Variance relief from Section 1A04.3.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a 70' side yard setback from the centerline of a road in lieu of the required 75', and for such other and further relief as may be determined by the Administrative Law Judge. 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 Kenneth J. Wells with kj Wells, Inc., who prepared the site plan, and Ellwood Sinsky, Esquire, counsel for Petitioner. 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 property which is the subject of this variance request consists of 1.2399 acres, more or less, and is zoned RC 5. The subject property is identified as Lot 12 on a Final Development Plan (FDP) filed among the County land records (Liber 79, Folio

203) which contains 15 single family dwelling lots for a subdivision known as “Calder Estates.”

The subject property is located in the Parkton area of Baltimore County.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

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.

As Mr. Wells indicated at the hearing, the setback issue involved in this case was apparently overlooked by everyone – including Baltimore County reviewing agencies – when the FDP was originally approved in 2005. The deficient setback exists only on Lot 12, and the Petitioner wanted to ensure that the error was corrected before lots in the subdivision are marketed and sold. The property is unique in that it is located within a larger subdivision, and the Developer explained that each of the 15 homes will be positioned on the lots in such a fashion to ensure a uniform look and feel throughout the development.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship. Petitioner would be required to reconfigure the layout of Lot 12, and would also compromise the spacing and uniformity of the subdivision.

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. In addition, the relief requested is extremely modest (i.e., a 5' variation to a 75' setback requirement), and the owners of Lot 8 – the only lot to have been sold – have indicated on the Plan that they support the variance request.

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 17th day of April, 2012, by this Administrative Law Judge that Petitioner's Variance request from Section 1A04.3.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a 70' side yard setback from the centerline of a road in lieu of the required 75', and for such other and further relief as may be determined by the Administrative Law Judge, be and is hereby GRANTED.

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

1. The Petitioner may apply for its 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 its 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.

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