

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
SE side of Railroad Avenue, 230' SE		
of c/line of Bellview Avenue	*	OFFICE OF
4 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
[311 Railroad Avenue (Lot 2B)]		
	*	FOR
Arthur A. and Paulyne A. Piccirilli,		
<i>Legal Owners</i>	*	BALTIMORE COUNTY
Hendrik D. and Pamela L. Shoemaker		
<i>Contract Purchasers</i>	*	CASE NO. 2012-0234-A
Petitioners		

* * * * *

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 the legal owners, Arthur A. and Paulyne A. Piccirilli. The Petitioners are requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- To allow a dwelling with a 15' setback and a sum of both sides of 30' in lieu of the required 25' and 40' respectively,
- To permit a lot width of 75' in lieu of 100', and
- To amend the previously approved 1st Amended Final Development Plan (FDP) of the Arthur A. Piccirilli Property Lot 2B only.

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 public hearing in support of the variance request were Arthur A. and Paulyne A. Piccirilli, legal owners, and Hendrik D. and Pamela L. Shoemaker, contract purchasers ("Petitioners"). 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.

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 Department of Planning, dated April 17, 2012, indicating that they did not oppose the Petitioners' request for a lot width of 75' in lieu of the required 100'; however that Department did oppose the variance request to allow a dwelling with a 15' setback and a sum of both sides of 30' in lieu of the required 25' and 40', respectively.

A ZAC comment was also received from the Bureau of Development Plans Review, dated April 10, 2012, indicating the water house connection serving 313 Railroad Avenue, if existing, must be relocated along with its private easement. Mr. Piccirilli testified that although the Final Development Plan (FDP) in Case No. IV-173 indicates the water connection to 313 Railroad Avenue would cross the neighboring lot (proposed 311 Railroad Avenue) with a private easement, he was later able to secure a direct water connection from a contractor (Cosentino Company) working in the area, in exchange for providing that contractor with a temporary easement for a "staging area" while it was undertaking infrastructure improvements in the vicinity.

Testimony and evidence revealed that the subject property is 22,677 square feet (unimproved land) and zoned DR 2. The Shoemakers have entered into a contract with the Piccirillis to purchase the property, which is designated as Lot 2B on the FDP (Exhibit 2).

The Piccirillis have resided in 313 Railroad Avenue since 1981 (Exhibit 3). In or about June 2007, they received approval from former Deputy Zoning Commissioner Murphy to subdivide their property, creating Lot 2A (on which 313 Railroad Avenue is located) and Lot 2B, on which the Shoemakers would like to construct a home, which would be known as 311

Railroad Avenue. Lot 2B is just over ½ acre in size, and as shown on the FDP, the proposed dwelling would have a 25' setback on the west side of the lot and a 15' setback on the east side of the lot, adjacent to 313 Railroad Avenue.

After reviewing plans with their builder, the Shoemakers would like to construct a 45' wide house on the site. The Shoemakers submitted proposed renderings of the home models they are considering, which would be approximately 2,100 square feet in size. Ms. Shoemaker testified that the dwelling at 313 Railroad Avenue is 2,500 square feet and 315 Railroad Avenue is 2,803 square feet.

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 Petitioners.

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).

Petitioners have met this test.

As for the first element, the subject property is an irregularly shaped lot. In addition, it is narrow and deep in configuration; both of these factors render the property "unique."

If the B.C.Z.R. were strictly enforced, the Petitioners would suffer a practical difficulty and/or hardship. Indeed, Petitioners would be required to construct a narrow and deep dwelling on the lot, which would not be as functional or aesthetically pleasing as the home they propose to construct (Exhibit 4).

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 opposition from any community associations in the Glyndon-Reisterstown area, which are vigilant groups that frequently participate and voice concerns at zoning/development hearings.

Two final observations are in order. The Piccirillis requested a lot width variance at the urging of the County Zoning Office. It is unclear whether in fact such relief is necessary, given that the 75' wide lot (in lieu of the required 100') was created by the FDP approved by Deputy Zoning Commissioner Murphy by Order dated June 1, 2007 (Exhibit 2). Even so, it is not clear whether variance relief was granted (or was necessary) in that case; to be on the safe side, I will grant the variance relief to eliminate any doubt on the point.

Finally, I do not disagree with the Department of Planning's comment that the need for the variance relief was in a sense a self-imposed hardship created upon recordation of the plat for the Piccirilli property. But the Shoemakers were not involved at that juncture, and it is they who are in fact requesting the variance relief. When all is said and done, it is only 10' at issue, and I believe that a 45' wide house would be more compatible with the homes in the area. In addition, the FDP indicates that the "building footprints shown are conceptual and may be changed." Exhibit 2.

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

THEREFORE, IT IS ORDERED, this 10th day of May, 2012, 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.), as follows:

- To allow a dwelling with a 15' setback and a sum of both sides of 30' in lieu of the required 25' and 40' respectively,
- To permit a lot width of 75' in lieu of 100', and
- To amend the previously approved 1st Amended Final Development Plan (FDP) of the Arthur A. Piccirilli Property (Case No. IV-173) Lot 2B only, in accordance with the terms of this Order,

be and is hereby GRANTED.

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

- The Petitioners may apply for any permits and may be granted same upon receipt of this Order. However the Petitioners are hereby made aware that proceeding at this time is at their 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 Petitioners 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