

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/side of Butler Road at the NW		
Corner of Glyndon Meadow Road	*	OFFICE OF ADMINISTRATIVE
3 rd Election District		
4 th Council District	*	HEARINGS FOR
(397 Butler Road)		
	*	BALTIMORE COUNTY
Martha J. Scanlan		
Petitioner	*	CASE NO. 2012-0240-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 the legal owner, Martha J. Scanlan. The Petitioner is requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a lot width of 68 feet in lieu of the required 70 feet at the building line, and to permit a side road setback of 22 feet in lieu of the required 30 feet. The subject property and requested relief is more fully depicted on the amended 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 Martha J. Scanlan and Michael Owings from Charles R. Crocken and Associates, Inc., the consulting firm who prepared the site plan. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of opposition or protest. The Petitioner testified that she shared with her neighbors the plans for the replacement dwelling, and she said they were very supportive.

Testimony and evidence revealed that the subject property is 10,418 square feet and split-zoned RC 5 and DR 3.5. The DR 3.5 portion (8,024 square feet) of the property is improved with a modest single family dwelling approximately 1,000 square feet in size. The Petitioner proposes

to raze this structure – which she explained was essentially a “summer cottage” constructed in the 1940s – and rebuild on essentially the same footprint a larger dwelling. The present dwelling is not in compliance with the B.C.Z.R. (regarding setbacks) and the proposed dwelling would require variance relief.

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, which indicated no opposition to the Petitioner’s request. The Department of Planning indicated that many of the adjacent lots are undersized, and that the redevelopment of this property would not be out of character for the neighborhood. That Department did request that architectural elevations be submitted for review and approval prior to the application for any building permits.

Based on the 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. Indeed, the Petitioner is constrained by existing site conditions on a small lot with a “cottage” style dwelling. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner, in that she would be unable to construct a larger and more modern home on the site.

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).

The Petitioner has met this test.

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 demonstrated by the absence of community opposition and 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 14th day of May, 2012, by this Administrative Law Judge that Petitioner's Variance request from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a lot width of 68 feet in lieu of the required 70 feet at the building line and to permit a side road setback of 22 feet in lieu of the required 30 feet, 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 her 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 shall comply with the ZAC comment from the Department of Planning, dated April 17, 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.

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:pz