

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
N side of Bird River Grove Rd., 3,969'		
E of c/line of Ebenezer Road	*	OFFICE OF
15 <sup>th</sup> Election District		
6 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
<b>(11116 Bird River Grove Road)</b>	*	FOR BALTIMORE COUNTY
Wayne Allen Sody	*	
Petitioner	*	<b>CASE NO. 2012-0259-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 the legal owner, Wayne Allen Sody. The Petitioner is requesting Variance relief from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a rear yard setback of 2' for a proposed addition and a front yard setback of 9' for an existing dwelling in lieu of the required 35', respectively. 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 Wayne Allen Sody and Hilly Bell. The neighboring owner, Linda Spliedt, and Gerard Ryban attended the hearing and opposed the variance request. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

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 (DPR), dated April 26, 2012, indicating 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.

In addition, a ZAC comment was received from the Department of Environmental Protection and Sustainability (DEPS) on May 10, 2012, indicating the Petitioner must satisfy certain Critical Area regulations (set forth in B.C.Z.R. § 500.14) given the proximity to the Bird River.

Testimony and evidence revealed that the subject property is 10,300 square feet and zoned RC 2. The Petitioner has lived in the dwelling since 1993, and wants to increase the size of the home to accommodate his fiancé (Ms. Bell) and a college-aged child. The Petitioner was granted administrative variance relief (Case No. 2012-0139-A) earlier this year to construct a garage in his front yard which exceeded the height limitations set forth in the B.C.Z.R. Ms. Spliedt testified she has lived in her home (located at 11114 Bird River Grove Road) since 1972, and is the Petitioner's next door neighbor. Ms. Spliedt testified that she is opposed to the variance relief because the proposed two-story addition would block her view of the water to the east. Ms. Spliedt indicated she would be amenable to the Petitioner constructing an addition on the side of his home facing Bird River Grove Road, but the Petitioner stated he wanted the addition to be constructed where planned, with a view of the river.

Based upon the testimony and evidence presented, I am persuaded to deny the request for variance relief. 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 lived in his home for nearly 20 years, and while the additional space would no doubt be convenient or desirable, such a showing is insufficient to obtain variance relief under Maryland law. In addition, the Petitioner failed to introduce any evidence that his property was unique when compared to homes in the vicinity, which is another indispensable element in a variance case.

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 denied.

THEREFORE, IT IS ORDERED, this   1   day of June, 2012, by this Administrative Law Judge, that Petitioner's Variance request from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a rear yard setback of 2' for a proposed addition and a front yard setback of 9' for an existing dwelling in lieu of the required 35', respectively, be and is hereby DENIED.

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

JEB:pz

Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County