

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1422 Clarkview Road)		
3 rd Election District	*	OF ADMINISTRATIVE
2 nd Councilmanic District		
Capital Acquisition Funding Group, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Daniel Baird,	*	BALTIMORE COUNTY
<i>Contract Purchaser/Lessee</i>		
Petitioners	*	CASE NO. 2013-0083-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the legal owner of the subject property, Capital Acquisition Funding Group, LLC, and the contract purchaser/lessee, Daniel Baird, (“Petitioners”). The Petitioners are requesting Variance relief from Sections 255.1 and 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a side and/or rear yard setback of 2.5’ in lieu of the 30’ required. 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 held for this case was Frank M. Harvey and Patrick C. Richardson, Professional Engineer with Richardson Engineering, LLC. J. Neil Lanzi, Esquire appeared and represented the Petitioners. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. There were no adverse comments submitted from any of the County reviewing agencies.

Testimony and evidence revealed that the subject property is 4.60 acres and is zoned ML. The property is improved with two buildings: a six story office building and a tennis facility known as Bare Hills Tennis Club. Ultimately, the Petitioners want to divide the overall parcel into two lots (1422 Clarkview, the office tower would be approximately 1.27 acres +/-; 1420 Clarkview, the tennis club, would be approximately 3.24 acres +/-). The Petitioners explained that at present both buildings are situated on one lot, and that they would prefer each building to have its own lot, which seems like a reasonable request. At the very least, doing so would facilitate a sale or other financial transaction involving just one of the buildings. Assuming two lots were created as shown on the plan (Exhibit 1), variance relief would be needed for an “internal” setback between the parcels. Most importantly for present purposes, nothing would change “on the ground,” and the Petitioners are not proposing any construction at the site.

Based upon the testimony and evidence presented, I will grant 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).

Petitioners have met this test. The lot is irregularly shaped, and the Petitioners are confronted with existing site conditions. The tennis facility was constructed in approximately 1965, while the office tower was built approximately 7 years ago.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty and/or hardship, given they would need to relocate the buildings, which is obviously impractical. 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 lack of opposition from the community and the lack of negative comments from Baltimore County reviewing agencies.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 19th day of November, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Sections 255.1 and 238.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a side and/or rear yard setback of 2.5' in lieu of the 30' required, be and is hereby GRANTED.

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:dlw