

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(3205 Green Knoll Road)	*	OFFICE OF
2 nd Election District		
4 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
Basha J. Jr. & Pia M. W. Jordan	*	FOR BALTIMORE COUNTY
Petitioners	*	
	*	Case No. 2013-0181-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Variance and/or Special Hearing and was filed by Lawrence E. Schmidt, Esquire on behalf of the legal owners. The Variance petition seeks relief from B.C.Z.R. § 100.6 to stable/pasture up to two (2) horses on 2.64 acres of land in lieu of the required three (3) acres, and the Special Hearing was filed to permit the non-conforming use of the property to stable/pasture one (1) horse on a parcel 2.64 acres in area. 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.

This matter was originally filed as an Administrative Variance, with a closing date of February 25, 2013. On February 26, 2013, Administrative Law Judge Stahl requested a formal hearing on this matter. The hearing was subsequently scheduled for Thursday, April 25, 2013 at 1:30 PM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson.

Appearing at the public hearing in support of the requests was Basha Jordan, legal owner. Lawrence E. Schmidt, Esquire with Smith, Gildea & Schmidt, LLC appeared and represented the Petitioners. There were no protestants or interested citizens in attendance and the file does not

contain any letters of opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

This matter was the subject of a Code Enforcement & Inspections Citation (Civil Citation No. 120975). By Order dated January 25, 2013, Administrative Law Judge Stahl, imposed a \$1,000 fine in the case, but suspended the civil penalty to allow Petitioners to seek variance relief.

There were no substantive Zoning Advisory Committee (ZAC) comments received from any County reviewing agencies.

Testimony and evidence revealed that the subject property is 2.64 acres in size and is zoned DR 5.5. The Petitioners acquired the property in 1987, and have since that time kept at least one horse on the premises. Until recently, the Petitioner has never received complaints or concerns related to the horses. In January of this year, an anonymous complaint was filed with the County, and that led to the zoning violation proceeding noted above.

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

The Petitioners have met this test. The property has very irregular dimensions (counsel described it as shaped like the State of Texas), and it is thus unique. The Petitioners would experience a practical difficulty if the regulations were strictly enforced, since they could no longer keep and board the horses they have owned for many years.

By copy of this Order to the Code Enforcement Bureau of the Department of Permits, Approvals & Inspections (PAI), that agency will be notified that variance relief was granted to Petitioners, and that the civil penalty in case # 120975 should be abated.

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

THEREFORE, IT IS ORDERED this 29th day of April 2013, by this Administrative Law Judge, that Petitioners' Variance request from §100.6 of the B.C.Z.R., to stable/pasture up to two (2) horses on 2.64 acres of land in lieu of the required three (3) acres, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' request for Special Hearing to permit the non-conforming use of the property to stable/pasture one (1) horse on a parcel 2.64 acres in area, be and is hereby DISMISSED WITHOUT PREJUDICE as moot.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would 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.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln