

IN RE: PETITION FOR VARIANCE
W side of New Avenue; 247 feet S
of the c/l of Bond Avenue
4th Election District
3rd Councilmanic District
(306 New Avenue)

Mary A. Beard
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FORBALTIMORE COUNTY
* **CASE NO. 2010-0085-A**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Mary A. Beard. Petitioner is requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed single-family dwelling with a side yard setback of 8 feet and a sum of side yards of 18 feet and a front yard average setback of 25.5 feet, in lieu of the required side yard setback of 15 feet and sum of side yards of 25 feet and the front setback of 30 feet. The subject property and requested relief are more fully depicted on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests was Petitioner Mary A. Beard, as well as Petitioner’s builder, Roy Snyder. Appearing as an interested citizen was George Harman of 5429 Weywood Drive in Reisterstown. There were no Protestants or other interested citizens in attendance.

Testimony and evidence offered revealed that the subject property is rectangular in shape and consists of approximately 10,125 square feet or 0.23 acre, more or less, zoned D.R.3.5. The property is located on the west side of New Avenue and south of Bond Avenue in the Reisterstown area of Baltimore County. The property is presently improved with an existing

one-story framed dwelling. At this juncture, Petitioner desires to raze the dwelling and replace it with a new dwelling; however, in order to do so, Petitioner is in need of the aforementioned variance relief.

In order to give some context and perspective to the instant request, a brief history of the subject property and the adjacent property to the south at 308 New Avenue is warranted. Petitioner, Mary A. Beard, previously filed a petition for special hearing and variance in Case No. 07-025-SPHA requesting a determination that the subject lots had not merged and to permit a lot width of 44 feet and other setbacks. By his Order, then-Deputy Zoning Commissioner John V. Murphy denied the relief requested on September 7, 2006 finding in part that Petitioner's father, John O. Beard, who held the lots under common ownership prior to his death on September 18, 2003, had merged the lots as that doctrine is discussed in the seminal case of *Remes v. Montgomery County*, 387 Md. 52 (2005). He instructed Petitioner on the need to establish an internal common lot line between the lots from which new construction can be varied through the re-subdivision process.

Petitioner then hired Joseph Larson and Spellman, Larson & Associates, Inc. to pursue the minor subdivision of the property held by her late father into two separate lots. During the process, it was determined that Petitioner would need variance relief from the minimum lot width requirements of the B.C.Z.R. As such, Petitioner and her sister, Edie Beard, filed Petitions for Variance in Case Nos. 08-392-A and 08-393-A, respectively. In an Order dated April, 2008, Zoning Commissioner William J. Wiseman, III granted the variance requests. A copy of Mr. Wiseman's Order was marked and accepted into evidence as Petitioner's Exhibit 3 and is incorporated herein by reference.

Following the minor subdivision of the property, Edie Beard retained ownership of Lot 2 (308 New Avenue as shown on the site plan), which was at that time unimproved, and Petitioner retained ownership of Lot 1 (306 New Avenue -- the subject property as shown on the site plan), which was improved with a dwelling. When Edie Beard began working through the process of hiring a builder and determining an adequate design and size for a new home, it became apparent that a variance would be needed and Ms. Beard filed a Petition for Variance from Section 1B02.3C.1 of the B.C.Z.R. for the side yard setback and a sum of side yards, respectively, for a proposed one-story, single-family dwelling measuring 27 feet 6 inches wide by 60 feet deep. In Case No. 10-0010-A, Mr. Wiseman issued an Order dated October 2009 granting the variance requests. In his decision, Mr. Wiseman noted that the proposed dwelling would be consistent with other homes in the area as demonstrated by the building elevations submitted and reviewed as well as photographs of the area. The new home would be centered on the lot with the same side yard setbacks as other homes in the area consistent with adjacent properties.¹ Finally, he noted that the Office of Planning supported the requested relief as indicated in its Zoning Advisory Committee (ZAC) comment contained in the case file. He also recognized that the variance requests in the case were driven by the narrow configuration and size of the lot. A copy of Mr. Wiseman's Order was marked and accepted into evidence as Petitioner's Exhibit 4 and is incorporated herein by reference, as is the Minor Subdivision Plat that was marked and accepted into evidence as Petitioner's Exhibit 5.

In the instant matter, Petitioner encountered the same difficulties as her sister in designing an adequate home that would fit within the setbacks required for the lot. As such, Petitioner is requesting similar side yard and sum of side yards setback relief, as well as relief

¹ See other cases in the immediate neighborhood involving variance relief for side yard setbacks in Case Nos.: 1977-0208 (8' side yard), 1979-0249 (side yard variance), 1989-0496 (side yard variance), and 1995-0166 (side yard of 13 ½ feet).

from the front yard averaging requirement. A floor plan that was marked and accepted into evidence as Petitioner's Exhibit 6 indicates a one-story single-family dwelling measuring 27 feet 4 inches in width by 66 feet deep.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated November 2, 2009 which indicates that the structure has been designed with a width of 27 feet 3 inches. This minimal increase in size from the originally planned dwelling is insignificant. The Office of Planning supports the requested relief subject to the review of architectural elevations. Petitioner should submit elevations and photographs of the neighborhood to illustrate compatibility of the structure in terms of architectural and building placement on the lot with other single-family homes in the neighborhood.

Considering of all the testimony and evidence presented, I am persuaded to grant the variance relief. In adopting the reasons and rationale set forth by Commissioner Wiseman in Case No. 10-0010-A, I too find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests and also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

I also find that the variance requests 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. Thus, I find that these variance requests can be granted as to meet the requirements of Section 307 of the B.C.Z.R. as interpreted in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 16th day of November, 2009 by this Deputy Zoning Commissioner, that Petitioner's Variance requests from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed single-family dwelling with a side yard setback of 8 feet and a sum of side yards of 18 feet and a front yard average setback of 25.5 feet, in lieu of the required is 15 feet and 25 feet and the front setback of 30 feet be and are hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner shall submit building elevations and photographs of the neighborhood to the Office of Planning to illustrate compatibility of the proposed structure in terms of architecture and building placement on the lot with other single-family homes in the neighborhood.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz