

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
N side of Railroad Avenue, 335' W		
of Seminary Avenue	*	OFFICE OF ADMINISTRATIVE
8 <sup>th</sup> Election District		
3 <sup>rd</sup> Council District	*	HEARINGS FOR
<b>(1428 Railroad Avenue)</b>		
	*	BALTIMORE COUNTY
Trevor Builders, Inc.		
Petitioner	*	<b>CASE NO. 2011-0339-A</b>

\* \* \* \* \*

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
NW side of Railroad Avenue, 320' W		
of Seminary Avenue	*	OFFICE OF ADMINISTRATIVE
8 <sup>th</sup> Election District		
3 <sup>rd</sup> Council District	*	HEARINGS FOR
<b>(1426 Railroad Avenue)</b>		
	*	BALTIMORE COUNTY
Trevor Builders, Inc.		
Petitioner	*	<b>CASE NO. 2011-0340-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

These matters come before the Office of Administrative Hearings for consideration of two (2) Petitions for Variance filed by the legal owner of the subject properties, Trevor Builders, Inc. The first matter, Case No. 2011-0339-A, 1428 Railroad Avenue, is brought by Roger Mann, President of Trevor Builders, Inc., and is requesting Variance relief under Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a front yard setback of 20 feet, side yard setbacks of 4 feet for each side, and a lot width of 32 feet in lieu of the required 25 feet, 10 feet, and 55 feet, respectively. The second matter, Case No. 2011-0340-A, 1426 Railroad Avenue, is also brought by Roger Mann, President of Trevor Builders, Inc., and is requesting Variance relief under Section 1B02.3.C.1 of the B.C.Z.R. to permit a front yard setback of 20 feet, side yard setbacks of 5.8 feet for each side, and a lot width of 37 feet in lieu of the required 25

feet, 10 feet, and 55 feet respectively. The subject properties and requested relief are more fully described on the site plans that were marked and accepted into evidence as Petitioner's Exhibits 1 (1426 Railroad Avenue) and 1A (1428 Railroad Avenue).

Appearing at the requisite public hearing in support of the variance requests were Petitioner Roger Mann of Trevor Builders, Inc. and John Willard, Esquire with McCadden & Willard, P.A., counsel for Petitioner. Eric Rockel attended the hearing and opposed the Petitioner's requests.

Testimony and evidence offered revealed that the subject properties are small parcels zoned DR 5.5, located in the Lutherville area of Baltimore County. Both parcels are improved with single family dwellings which, according to tax records, were constructed over 100 years ago. Petitioner purchased the homes several months ago for \$70,000. Petitioner seeks to raze the dwellings, and will construct in their place dwellings of comparable size and appearance. Petitioner testified he built the house at 1430 Railroad Avenue (depicted on Petitioner's Exhibit 2), which is situated immediately adjacent to the subject parcels, and Mr. Mann testified the houses proposed for 1426 and 1428 Railroad Avenue would be very similar in size and appearance to that dwelling.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse comments received from any of the County reviewing agencies.

Based upon the testimony and evidence presented, I am persuaded to grant Petitioner relief under B.C.Z.R. § 304, concerning undersized lots. I will not grant relief under B.C.Z.R. § 307, the more generic variance provision of the B.C.Z.R., since the Petitioner submitted no evidence or argument regarding uniqueness of the property or any practical difficulty it would experience if

variance relief was denied. Both elements are prerequisites to relief under § 307. *Cromwell v. Ward*, 102 Md. 691 (1995).

Finally, the disposition of this case is governed by Mueller v. People's Counsel, 177 Md. App. 43 (2007), in which the Court of Special Appeals held that in those scenarios where it is applicable (as it is in this case) B.C.Z.R. § 304 controls over the more general variance provision found at § 307. B.C.Z.R. § 304 is a “grandfathering” regulation that allows (under certain conditions) an owner to build on land that has become substandard as a result of the enactment of restrictive zoning regulations.

As noted above, the dwellings on the subject property were constructed over 100 years ago, long before Baltimore County first enacted a set of zoning regulations. The subject properties later became substandard, given that the B.C.Z.R requires certain lot widths and setbacks that are not met. B.C.Z.R. § 1B02.3.C. To obtain relief under B.C.Z.R. § 304 does not require a Petitioner to satisfy the standards for variance relief under § 307. Id. At 84, 87.

B.C.Z.R. § 304 provides in pertinent part as follows:

§ 304.1. Types of dwellings allowed; conditions.

[Bill Nos. 64-1999; 28-2001]

Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
- B. All other requirements of the height and area regulations are complied with; and
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

In this case, it is clear that elements A and B are satisfied: the lots were created by deed long before 1955, and the lots and structures proposed thereon will meet the height and area requirements of the zone. Petitioner testified the homes will be approximately 24 feet high from

grade level to roof peak, and the tax records reveal both lots are larger than 6,000 square feet. See B.C.Z.R. 1B02.2.A and 1B02.3.C.

Thus, the only open issue is whether Petitioner satisfies B.C.Z.R. § 304.1.C. Mr. Rockel contends Petitioner in fact owns both 1426 and 1428 Railroad Avenue, and as such has “sufficient adjoining land” to enable it to construct one dwelling on both lots that would comply with all current zoning regulations., i.e., B.C.Z.R. § 1B02.3.C. A similar argument was made in Mueller, and the Court held that § 304 was meant to prohibit construction on undersized residential lots “when a landowner possesses a contiguous, vacant or undeveloped parcel of property.” Id. At 93. (emphasis in original). That is not the case here (since both parcels are improved) and Petitioner therefore satisfies all elements required under § 304.1. Petitioner is subject to the further requirements and procedures set forth in B.C.Z.R. § 304.2-.7, which essentially examines whether the proposed dwellings are compatible with the surrounding neighborhood. Id. At 71-71 (discussing “compatibility” phase of the process). Petitioner submitted a letter from the adjoining owners at 1430 Railroad Avenue (Petitioner’s Exhibit 3) wherein they express support for the Petitioner’s proposal, and this and similar information will no doubt be pertinent to the analysis under B.C.Z.R. § 304.2-.7.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered, I find that Petitioner should be granted relief under B.C.Z.R. § 304.

THEREFORE, IT IS ORDERED this 15 day of July, 2011 by this Administrative Law Judge that Petitioner’s Variance request for Case No. 2011-0339-A, 1428 Railroad Avenue, pursuant to Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit a front yard setback of 20 feet, side yard setbacks of 4 feet for each side, and a lot width of

32 feet in lieu of the required 25 feet, 10 feet, and 55 feet, respectively, be and is hereby granted pursuant to B.C.Z.R. § 304;

IT IS FURTHER ORDERED that Petitioner's Variance request for Case No. 2011-0340-A, 1426 Railroad Avenue, pursuant to Section 1B02.3.C.1 of the B.C.Z.R., to permit a front yard setback of 20 feet, side yard setbacks of 5.8 feet for each side, and a lot width of 37 feet in lieu of the required 25 feet, 10 feet, and 55 feet respectively, be and is hereby GRANTED, pursuant to B.C.Z.R. § 304, subject to the following:

1. Petitioner is obliged to comply with B.C.Z.R. § 304 in its entirety, including the submission of plans and/or elevation drawings to the Department of Permits, Approvals and Inspections at the time of building permit application.

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

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

JEB/pz