

IN RE: PETITION FOR VARIANCE
SE side Bellona Avenue, 290 feet SW
of Seminary Avenue
9th Election District
3rd Councilmanic District
(1433 and 1435 Bellona Avenue)

Estate of Leroy Y. Haile, Jr. and
Leroy Y. Haile, III
Petitioner

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2011-0179-A**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed on behalf of the Estate of Leroy Y. Haile, Jr. (Leroy Y. Haile, III, personal representative) the legal owners of the subject property. Petitioner requested Variance relief as follows:

- 1433 and 1435 Bellona Avenue (existing dwellings): From Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a front yard setback of 20 feet in lieu of the required 25 feet for two existing dwellings. At the time of the hearing, Petitioner amended his request to allow the 20 feet front yard setback in lieu of 28 feet required pursuant to front yard depth averaging per B.C.Z.R. 303.1.
- 1433 Bellona Avenue (existing dwelling): From Section 1B02.3.C.1 of the B.C.Z.R. to allow a side yard setback of 6 feet in lieu of the required 10 feet for an existing dwelling.

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 requisite public hearing in support of the variance request was Leroy Y. Haile, III, personal representative, on behalf of the Estate of Leroy Y. Haile, Jr., property owner,

and Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan and is also assisting the Petitioners in the permitting process.

Testimony and evidence offered revealed that the properties are rectangular in shape and contain existing one story dwellings. Lot 1 known as 1433 Bellona Avenue contains 7,774 square feet or 0.178 acres more or less. Lot 2 known as 1435 Bellona Avenue contains 8,123 square feet or 0.186 acres more or less.

Further testimony set out that the subject structures were built in the 1950s and were purchased by the Petitioner in the latter part of the 1970s.

Additionally, it was noted that the structure at 1433 Bellona Avenue, being constructed prior to the Zoning Regulations being imposed, already existed when the present setback requirements were instituted. Finally, it was revealed that Bellona Avenue directly fronting the subject properties had been greatly expanded as part of a highway widening project. As a result, the depth of the available frontage of the subject properties had been significantly reduced.

Petitioner then stated that these properties are presently the subject of a major subdivision development process. Any development related issues can and must be resolved during that review process. However, if the existing dwellings are to be razed, the Planning Office requested that the new dwellings conform to the Lutherville Community Plan Guidelines for new residential development.

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 December 9, 2010 which indicate that the Office supports the requested zoning relief for the existing dwellings on proposed lots. It appears that any development related issues can be resolved during that review process, but it should be noted that if the existing dwellings are to be razed then the Planning

Office requests that the new dwellings conform to the Lutherville Community Plan guidelines for new residential development.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The taking of significant ground as a result of the Bellona Avenue widening project certainly altered the subject lots in comparison with others in the area, rendering them unique. Moreover, the lots and existing dwellings predate the applicable Zoning Regulations and were thus placed in a unique position vis-a-vis the present day side yard setbacks.

Additionally, I find that strict enforcement of the B.C.Z.R. would cause the Petitioner to suffer practical difficulty and undue hardship. It is impossible to conform with the present front yard setbacks as a result of the unique configuration which the properties were placed in as a result of the Bellona Avenue widening; the side yard cannot be altered without removing a significant dwelling which has been in place for over 50 years.

I further find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety, and general welfare. Thus, I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R, as established 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 Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED this 26th day of January, 2011 by this Administrative Law Judge that Petitioners' Variance requests as follows:

- 1433 and 1435 Bellona Avenue (existing dwellings): From Sections 1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a front yard setback of 20 feet in lieu of the required 28 feet for two existing dwellings; and
- 1433 Bellona Avenue (existing dwelling): From Section 1B02.3.C.1 of the B.C.Z.R. to allow a side yard setback of 6 feet in lieu of the required 10 feet for an existing dwelling

be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for their building permit 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.
2. The new dwellings shall conform to the Lutherville Community Plan Guidelines for new residential development.

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

____SIGNED_____
LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:pz