

IN RE: PETITION FOR VARIANCE
W side of York Road, 23 feet NW of
the c/l of Sparks Road
8th Election District
3rd Councilmanic District
(14954 York Road)

Thomas A. Traill
Petitioner

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **CASE NO. 2011-0212-A**

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ORDER AND OPINION

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance filed by the legal owner of the subject property, Thomas A. Traill. Petitioner is requesting Variance relief from Section 1A08.6.B.5.a(3) of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a principal building setback from the rear lot line of 6 feet in lieu of the required 50 feet for an existing dwelling. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan. Mr. Traill, the Petitioner, was not able to attend the hearing. There were no Protestants or interested persons in attendance.

Testimony and evidence offered revealed that the subject property is an irregular shaped parcel located on the west side of York Road just south of Sparks Road in Sparks. The property contains 6.80 acres split zoned R.C.4 and R.C.7, and is improved with an existing two story single-family dwelling and an existing barn.

Mr. Doak testifying on behalf of the property owner stated that Dr. Traill purchased the subject property in 2002 and converted the existing barn on the property into a residence. Dr. Traill has been residing in the barn on the property since that time. His overall plan has always been to renovate and reconstruct the old existing house that is situated on the property. He is now ready to proceed with the demolition and reconstruction of a new home on the subject property, and after which he will discontinue using the barn as a residence. Mr. Doak testified that Dr. Traill has worked with the Baltimore County reviewing agencies to gain approval for the reconstruction of this house. The original house was built in 1885 and the owner intends to keep the original log portion of that house and incorporate the old log portion into the new construction. The old house as situated contains 2400 square feet of living space and the newly constructed house once finished will comprise 3400 square feet. In order to proceed with the plans to reconstruct this dwelling, the requested variance is necessary.

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 February 1, 2011, which indicate they do not oppose the Petitioner's request for a variance. A site visit was conducted on February 2, 2011, and it should be noted that as of that date an existing barn located on the property that is referenced below is currently being used for residential purposes, therefore the Office of Planning requests that condition 2 from Case No. 03-549-SPH, stating that "Upon completion of the renovations to the existing dwelling, the barn cannot be used for residential purposes. The Petitioner shall vacate the barn and cease using same for residential purposes within (90) days from the date of the issuance of a use and occupancy permit for the dwelling", shall be upheld. It is also requested that architectural elevations are submitted to the Office of Planning prior to the application for any building permit. Comments were received from the

Department of Environmental Protection and Sustainability dated February 3, 2011, which indicate that development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains and comply with the Forest Conservation Regulations. Recordation in Land Records of a Forest Buffer Easement and its Declaration of Protective Covenants may be required prior to issuance of a building permit. Forest Conservation Law may be met by filing a Single Lot Declaration of Intent. Groundwater Management will need to review a proposed building permit to remodel the dwelling there. The well setback appears to be an issue. A variance may be necessary.

Based upon the testimony and evidence presented, I am persuaded to grant the request for 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. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

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, I find that Petitioner's variance request should be GRANTED.

THEREFORE, IT IS ORDERED this 7th day of March, 2011, by this Administrative Law Judge that Petitioner's Variance request from Section 1A08.6.B.5.a(3) of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a principal building setback from the rear lot line of 6

feet in lieu of the required 50 feet for an existing dwelling be and is hereby GRANTED, subject to the following:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is 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, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
3. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
4. Architectural elevations shall be submitted to the Office of Planning for review and approval prior to the application for any building permit.
5. The Petitioner shall be required to discontinue the use of the existing barn as a residence within 90 days from the date that a use and occupancy permit is issued for the newly constructed house. The Petitioner shall be required to remove the cooking facilities from the barn so as not to have two residences upon a single lot.

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

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz