

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
S/Side Third Avenue, 670' E of c/line of		
Harford Road	*	ZONING COMMISSIONER
<b>(3021 Third Avenue)</b>		
11 <sup>th</sup> Election District	*	OF
6 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
Robert Marshall & Ralph Marshall		
<i>Legal Owners</i>	*	<b>Case No. 2011-0049-A</b>
Edwin Howes, <i>Contract Purchaser</i>		
Petitioners	*	

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by Robert Marshall and Ralph Marshall, owners of the subject adjacent lots<sup>1</sup>, and the contract purchaser, Edwin Howes. The Petitioners seek relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 40 feet in lieu of the required 55 feet, to allow side yard setbacks of 8 feet in lieu of 10 feet, and a lot size of 4,000 square feet in lieu of the required 6,000 square feet as required in the D.R.5.5 zone. The subject property and requested relief are more particularly shown on the site plan submitted and marked into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request was Craig Rodgers, a land development consultant who is assisting the Petitioners in the zoning and permitting process. Appearing as Protestants/interested persons were Anne C. Blackburn Suznick and Robert C. Suznick (3024 Third Avenue) and Robert J. Rust (3023 Third Avenue). There were

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<sup>1</sup> Sylvia E. Marshall owned five (5) lots known as Lots 255 thru 259 in the subdivision of Carney Heights. Having now departed this world, her sons inherited the property and wish to sell Lots 258 and 259 to Mr. Howes for development with a two-story single-family dwelling.

no unfavorable Zoning Advisory Committee (ZAC) comments received from the County reviewing agencies.

Testimony indicated that the subject property, known as Lots 258 and 259 on Maryland Tax Map 71, are located on the south side of Third Avenue just east of Harford Road. Each lot is 20' wide x 100' deep and, when combined, consists of an area of 0.092 acres or 4,000 square feet, zoned D.R.5.5, and is in the Carney area of the County. Mr. Rodgers indicated that the property is improved with a concrete block garage that had been used by the Marshall family whose residential property was on Second Avenue, which abuts to the rear of the Third Avenue lots. The subject combined lots do not meet the lot width nor lot area of the D.R.5.5 zone. Mr. Rodgers opined that when the development was originally established in circa 1900, most of the lots were created with 20-foot widths. *See* Petitioners' Exhibit 2 – a portion of the Carney Heights subdivision plat recorded in the Land Records of Baltimore County in Plat Book No. 6, Folio 158. The narrowness of these lots resulted in many property buyers purchasing two (2) or more lots. When houses were then constructed, the neighborhood took a non-uniform appearance containing various sized yards, with widths of 40 feet, 60 feet, 80 feet, and larger yards in 20-foot increments. As Petitioners' consultant pointed out, there are a number of residences presently existing on 40-foot wide lots, six (6) of which exist on Third Avenue. Apparently, construction on 40-foot lots in the subdivision took place prior to the adoption of the zoning regulations in Baltimore County and therefore not in violation of the present D.R.5.5 zoning. I could not find prior variance approvals for any undersized lots on Third Avenue and the merits of those 40-foot improved lots either obtained with or without a petition for variance are not before me. Turning to the subject zoning variance, the property was owned by Sylvia Marshall. Mrs. Marshall and her husband owned five (5) lots with a total cumulative width of

100 feet. Following her death, Mrs. Marshall's sons entered into a contract for the sale of two (2) lots on which the existing garage will be razed and a new single-family home is proposed. Mr. Rodgers noted that since several of the other homes are built on 40-foot lots, that the Petitioners' proposal is compatible with the existing pattern of development. Variance relief is necessary in order to proceed.

Testifying in opposition to the variances and proposed development of Lots 258 and 259 were Robert and Anne Suznick who have resided across the street from the subject property since 1975. Their home, when constructed in 1902, was built on two (2) 20-foot lots (222 and 223). They spoke of the difficulties of living on a small 4,000 square foot lot and the narrowness of Third Avenue that they say is only 18 feet wide. Apparently, some of the current residents and tenants living in some rental houses park cars and pick-up trucks along the south side of Third Avenue, which at this location rises in topography when approaching from either the east or west so that visibility of these parked vehicles is obstructed. The Suznick's expressed concerns that an additional home across from theirs would only further add to the absence of adequate off-street parking. If the variance is granted and another home is built on the remaining three (3) lots (255 thru 257), the situation would be intolerable. They state that while single vehicles can negotiate through the area, it is deemed inadequate for emergency vehicles should they need to reach homes at the end of Third Avenue in the event of fire, etc. Likewise, Mr. Rust opposed two (2) homes being built on the five (5) lots. He thought that such development was motivated by greed and that two (2) homes would complicate the existing utilities and be incompatible with the neighborhood. He stated that just bringing in trucks and building supplies to build a new home in this area would be difficult and burdensome for the local area residents.

As noted above, the property is zoned D.R.5.5. The D.R.5.5 zoning classification imposes a number of requirements for the construction of single-family dwellings thereon. First, each lot must be a minimum 6,000 square feet in area; the subject lot is 4,000 square feet. Secondly, for any single-family dwelling on a D.R.5.5 lot, the minimum front property line setback is 25 feet and a 30-foot rear property line setback must be maintained. Finally, 10-foot side yard setbacks must be maintained on each side. In this regard, the Petitioners proposal meets or exceeds the front and rear property line setbacks but has deficiencies under the current regulations relating to the lot area, side yard setbacks and its width. Under the D.R.5.5 zoning regulations, a minimum lot width of 55 feet is required. Although the subdivision plat was recorded well prior to the adoption of the zoning regulations, the current requirements must be maintained or variance relief acquired before building permits can be approved.

The Zoning Commissioner's authority to grant variance relief from the requirements of the B.C.Z.R. is established in Section 32-3-301 of the Baltimore County Code (B.C.C.). Section 307 of the B.C.Z.R. contains the standards for the grant of variance relief. This section has been interpreted by the Appellate Courts of this State, most notably in *Cromwell v. Ward*, 102 Md. App. 691 (1995). In *Cromwell*, the Court established two (2) tests that need to be satisfied in order for variance relief to be granted.

First, it must be established that the property at issue is unique. As noted, the tract is comprised of five (5) lots identified as Lots 255 through 259 of the subdivision of Carney Heights. The fact that these lots were laid out prior to the adoption of the first set of zoning regulations in Baltimore County (1945) is a significant factor. However, the Petitioners and owner of the undersized lots owns sufficient adjoining land to conform to the width and area

requirements. There is nothing unique about the subject lots which are clearly rectangular in shape as are the other 400 or so lots in this subdivision.

Second, and perhaps a decade ago, the finding of practical difficulty or hardship in not being able to develop these two (2) lots would be all Petitioners would have needed to show in order to be granted the variance they request. However, the Court in *Cromwell*, *infra*, redefined the test for variance, requiring that before a Petitioner even gets to the question of hardship and practical difficulty, there must be a finding that the property is unique when compared to other properties in the neighborhood. The legal standard now requires a finding that the property has some special circumstances or conditions existing that are peculiar to the land or the structure, which is the subject of the variance request. This finding must be made before any consideration of hardship or difficulty is made and if the property is not found to be unique, no variance can be granted. Equally important, the Court wanted to correct the practice of many jurisdictions finding hardship and difficulty first, which would then be used to show the property was unique, reasoning that the unusual situation on the property was different from that found on surrounding properties. Mr. Rodgers' effort to demonstrate hardship and practical difficulty is admirable, the evidence before me, however, gives no indication that the regulations impact the Marshall's property in any way different from other lots in the neighborhood. As stated, the lot is as plain and rectangular as one could find. The lots are indistinguishable from others in the neighborhood. Lastly, a visit to the property to understand the fears expressed by the residents as to traffic congestion and dangers created while constructing the proposed home gave me an opportunity to view the pattern of development in the neighborhood. To squeeze a house onto these two (2) lots would adversely affect the neighborhood. While several homes are on two (2)

lots rather than three (3) or more lots, it was noted that the adjoining properties are separated by distances from these homes so it appears to be a consistent pattern.

After due consideration of the testimony and evidence presented, I am persuaded that the variance should not be allowed and will so order.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 13<sup>th</sup> day of October 2010 that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 40 feet in lieu of 55 feet, side yard setbacks of 8 feet in lieu of 10 feet, and a lot size of 4,000 square feet in lieu of the required 6,000 square feet as required in the D.R.5.5 zone, be and is hereby DENIED.

Any appeal of this decision shall be taken in accordance with the Baltimore County Code Section 32-3-401.

WJW:dlw

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SIGNED  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County