

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NW Corner of Walker Road and		
Valley Mill Road	*	OFFICE OF
6 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
(1502 Walker Road)		
	*	FOR BALTIMORE COUNTY
Joseph and Margaret Ardolino		
Petitioners	*	CASE NO. 2012-0253-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by the legal owners, Joseph and Margaret Ardolino. The Petitioners are requesting Variance relief from Section 32-4-409(e) of the Baltimore County Code (B.C.C.), to permit a proposed 3,000' panhandle access length in lieu of the maximum permitted panhandle access length of 1,000' in a RC zone.¹ 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 public hearing in support of the variance request were Petitioners Joseph and Margaret Ardolino. They were represented at the hearing by Jeffrey H. Gray, Esquire. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R. Two neighbors – Charles Krantz and John Lotz – represented by Robert D. Porter, Esquire, attended the hearing and opposed the Petition.

¹ Under the B.C.Z.R., the Office of Administrative Hearings may grant variances with respect to height and area, parking and sign regulations. B.C.Z.R. § 307.1. The regulations provide that the Office of Administrative Hearings “shall have no power to grant any other variances.” Id.; see also B.C.C. § 32-3-301. Even so, the development regulations provide that the panhandle driveway length is subject to variance under B.C.Z.R. § 307. B.C.C. § 32-4-409(e)(3). This would seem to raise an interesting issue of statutory construction, but in the case at hand I will assume the Office of Administrative Hearings has authority to grant relief in these circumstances.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. A ZAC comment was received from the Bureau of Development Plans Review (DPR), dated April 26, 2012, indicating their support as long as the Developer complies with all of their minor subdivision comments dated January 17, 2012.

Testimony and evidence revealed that the subject property is 53.68 acres (2,338,300 square feet) and split-zoned RC 2 and RC 4. The property is in the Freeland area of Baltimore County, and Petitioners are seeking approval of a minor subdivision for 3 residential dwellings on the site. The Petitioners have already constructed their residence on the RC 2 portion of the site, and wish to construct two additional single family dwellings on the RC 4 portion of the site. To do so requires variance relief.

Based upon the testimony and evidence presented, I am persuaded to deny the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md 53, 80 (2008).

Petitioners have met this test.

The property qualifies as “unique” as that term is used in the law. The parcel is large, rural, and of irregular dimensions. Indeed, it would be hard to even describe the shape of the parcel using geometric terminology. See Exhibit 1. While the peculiarity or uniqueness of property is obviously required, courts have stated that the dispositive element in variance cases is whether the applicant will suffer a hardship or will be denied a “reasonable and significant” use for the property. Chesley v. City of Annapolis, 176 Md. App. 413, 427-32(2007).

In this case, if relief is denied, the Petitioners will be unable to construct dwellings on proposed Lots 2 and 3, a use which is permitted by the B.C.Z.R. and supported by reviewing County agencies. Mr. Porter is correct when he argued that denial of relief would not be tantamount to an unconstitutional taking, given that Petitioners could certainly farm the property. Even so, variances are permitted even in circumstances where strict application of the regulations would not constitute a “taking.” Belvoir Farms v. North, 355 Md. 259, 281 (1999).

While I am mindful of the concerns articulated by Petitioners’ neighbors, I do not believe their testimony was sufficient to serve as a basis for denial of relief. The driveway was designed and oriented in coordination with Baltimore County environmental authorities, and will not have a detrimental impact upon the community or neighboring owners. I understand and am sympathetic to the concerns raised by Messrs. Kratz and Lotz, but I believe the gist of their concerns centered on the two additional homes proposed by Petitioners, which is not the issue in this case. Both gentlemen expressed concern with traffic, over crowding and environmental impacts, all of which no doubt arise when new homes are constructed. But Petitioners do not need relief or permission to construct the homes. It is solely the driveway at issue in this case, and while its proposed length is three times that permitted by the Code, I do not believe that the additional length will cause any negative impacts upon the community.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and after considering the testimony and evidence offered by the Petitioner, I find that Petitioners’ variance request should be granted.

THEREFORE, IT IS ORDERED, this 14 day of June, 2012, by this Administrative Law Judge, that Petitioners’ Variance request from Section 32-4-409(e) of the Baltimore County Code (B.C.C.), to permit a proposed 3,000’ panhandle access length in lieu of the maximum

permitted panhandle access length of 1,000' in a RC zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.
2. Compliance with the ZAC comments made by the Bureau of Development Plans Review dated January 17, 2012 and April 26, 2012, copies of which are attached hereto and made a part hereof.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:pz