

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
NE/side of Ridgefield Road, 178' SE c/line		
Of Felton Road	*	OFFICE OF ADMINISTRATIVE
(112 Ridgefield Road)		
9 th Election District	*	HEARINGS FOR
3 rd Council District		
	*	BALTIMORE COUNTY
Hermann and Anne B. Schmid		
<i>Petitioners</i>	*	CASE NO. 2012-0228-A

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owners of the property, Hermann and Anne B. Schmid. The Petitioners are requesting Variance relief from § 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a side yard setback of 2.75' and a sum of side yard setbacks of 10.75' in lieu of the required 12' and 20', respectively. 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.

This matter was originally filed as an Administrative Variance, with a closing date of April 16, 2012. On April 13, 2012, Maxwell Collins, Esquire, on behalf of the Dulaney Valley Improvement Association, requested a formal hearing on this matter. The hearing was subsequently scheduled for Thursday, May 17, 2012 at 10:00 AM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson. In addition, a sign was posted at the property and an advertisement was published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing. There was some dispute concerning the adequacy of the sign posting, although it is undisputed the sign was erected by a certified poster, Linda O'Keefe.

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.

Appearing at the public hearing held for this case were Petitioners Hermann and Anne B. Schmid. Several neighbors attended the hearing to voice their opposition to the petition, including: Maxwell R. Collins, II, Robert A. Cordes, M.D., Bradley W. Potterfield, Patrick J. Connolly, Jr., and Susan Shaffer.

Testimony and evidence revealed that the subject property is 7,200 square feet and zoned DR 5.5. In approximately May, 2011, the Petitioners engaged a contractor to install an addition and deck to the rear of their home. See Petitioners' Exhibit 4. At or about the same time, the Petitioners also constructed an attached "shed" at the side of his home, and it is this structure that was the subject of the hearing. Petitioners' Exhibit 2. The Petitioners testified they spoke with Baltimore County zoning authorities, who told them the shed would not need a permit if it was less than 120 square feet and at least 30" from the property boundary. This proved to be erroneous information, and Petitioners learned they would need variance relief for the shed, which has already been constructed. The community association – Dulaney Valley Improvement Association, Inc. (DVIA) – met on May 14, 2012 and voted (unanimously) to oppose the petition for variance.

Based upon the testimony and evidence presented, I will deny the request for variance relief. Maryland law imposes strict requirements which must be met in variance cases, and the Petitioners simply failed to present any testimony that would satisfy those standards.

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).

The Petitioners failed to meet this test. Indeed, there was no evidence or argument presented that Petitioners' property was different in any material respects from adjoining neighbors.

Mr. Collins testified that DVIA would like for Petitioners to be required to remove the shed. I do not have such equitable or coercive powers, however, and am unable to enter such an order. Enforcement of the County's zoning laws and Orders of the Zoning Commissioners is the responsibility of the Baltimore County Department of Permits, Approvals and Inspections (PAI). Baltimore County Code (B.C.C.) § 32-3-602. It is that agency which must make such a determination, and it too has a hearing procedure for such cases. B.C.C. § 3-6-101.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence, I find that Petitioners' variance request should be denied.

THEREFORE, IT IS ORDERED, this 23rd day of May, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance relief under § 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a side yard setback of 2.75' and a sum of side yard setbacks of 10.75' in lieu of the required 12' and 20', respectively, be and is hereby DENIED.

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

JEB:dlw

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County