

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S/side of Elm Ridge Avenue, 570' NE		
of Leeds Avenue	*	OFFICE OF ADMINISTRATIVE
13 th Election District		
1 st Council District	*	HEARINGS FOR
(1218 Elm Ridge Avenue)		
	*	BALTIMORE COUNTY
Ronald W. and Jean Ruff		
Petitioners	*	CASE NO. 2012-0235-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, Ronald W. and Jean Ruff. The Petitioners are requesting Variance relief from Section 402.1.B (Chart) of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- To allow a minimum lot width of 50' in lieu of the required 90',
- To allow a minimum side yard setback of 10' in lieu of the required 15', and
- To allow a minimum sum of side yard setbacks of 20' in lieu of the required 35'.

The subject property and requested relief is more fully depicted on the amended 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 Ronald W. and Jean Ruff and Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan. Appearing in opposition were John Kapustka, Jacqueline V. Harle, Nancy L. Yospa, and Edward M. Williams. Benjamin Bronstein, Esquire appeared as counsel and represented the community. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

Testimony and evidence revealed that the subject property is a single-family dwelling constructed in 1923. Mr. Doak testified the Petitioners own Lots 4, 6A and 7A, which in the

aggregate total 18,475 square feet. Ms. Ruff testified about the history of the property, which was first owned by the Ruff family in 1941. *See* Exhibits 3A-G. Ms. Ruff stated that the second floor of the premises was first rented to a tenant (Ms. Cooper) in or about 1965, and that a separate entrance was used to access this apartment. Apparently, the second floor continued to be rented as an apartment through at least 2009. At or about that time, the Petitioners acquired the premises and began renovations to the first floor and basement. Ms. Ruff stated that the basement was first used to house a tenant in 2011, at which time she secured from Baltimore County licenses for the three apartments.

The Petitioners now propose to merge Lots 4, 6A and 7A (shown on Exhibit 1) into one deed, which would satisfy the minimum square footage required under B.C.Z.R. § 402.1. *See* Exhibit 2. However, to lawfully operate three apartments in the dwelling, the Petitioners would require a lot width and setback variances, as mentioned above.

Mr. Kapustka, who lives at 1216 Elm Ridge Road, testified he is opposed to the variance relief, and believes three apartments in the dwelling would be detrimental to the community. Mr. Kapustka, who has lived in the area for approximately 45 years, also stated that in his opinion there was nothing “unique” about 1218 Elm Ridge, which he felt was very similar to the other homes and lots in the neighborhood.

The final witness was Edward Williams, who lives at 1220 Elm Ridge Road. Mr. Williams has lived in his home for 15 years, and he has for many years rented the second floor of his home to a tenant. He indicated he was opposed to the variance relief, and felt that three apartments in the dwelling would negatively impact the community

Counsel for Protestants submitted (Protestants’ Exhibit 2) a 14-page exhibit signed by 42 neighboring owners. Each of these owners stated they opposed the variance request, and felt that “permitting rental houses with more than two rental units” would disrupt the general welfare of the

community.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. There were no adverse comments received from any of the County reviewing agencies.

Based upon the testimony and evidence presented, I am persuaded to deny the request for variance relief. The Petitioners have simply failed to adduce sufficient proof, as required by Maryland law.

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).

In this case, the subject property is substantially similar to the adjoining homes shown on the Plan (Exhibit 1). Mr. Doak testified that since the lots were created in 1926 and 1940 (*See* Plats, Exhibits 3H and 3I), before the B.C.Z.R. was enacted, that renders the property “unique.” I respectfully disagree, and would note that if that argument prevailed, each of the homes shown on the subdivision plats would also qualify as “unique,” and would be entitled to variance relief. That is an untenable proposition.

In addition, there was no proof the Petitioners would suffer a practical difficulty and/or hardship if the B.C.Z.R. were strictly enforced. Indeed, when Petitioners acquired the home in 2009, only two apartments were established in the dwelling, and the community has indicated it has no objection to such use continuing.

I also do not believe the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is amply demonstrated by the opposition of the several community members

who attended the hearing, and the signatures of 42 adjoining homeowners who also objected to the relief requested.

Finally, as noted at the outset, Petitioners' site plan was amended, and they now propose to combine three (3) lots. Under the Baltimore County Code (B.C.C.), the "combination of any two or more lots ... for any purpose" constitutes "development," which would require the Petitioners to obtain approval or an exemption from the Baltimore County Department of Permits, Approvals and Inspections.

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

THEREFORE, IT IS ORDERED, this 10th day of May, 2012, by this Administrative Law Judge that Petitioners' Variance request from Section 402.1.B (Chart) of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- To allow a minimum lot width of 50' in lieu of the required 90',
- To allow a minimum side yard setback of 10' in lieu of the required 15', and
- To allow a minimum sum of side yard setbacks of 20' in lieu of the required 35',

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