

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
W/side of Lodge Forest Drive, 162.5' N		
of c/l of North Point Creek Road	*	OFFICE OF ADMINISTRATIVE
15 <sup>th</sup> Election District		
7 <sup>th</sup> Council District	*	HEARINGS FOR
<b>(2206 Lodge Forest Drive)</b>		
	*	BALTIMORE COUNTY
Elaine M. Krus		
Petitioner	*	<b>CASE NO. 2012-0249-A</b>

\* \* \* \* \*

**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 owner, Elaine M. Krus. The Petitioner is requesting Variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed dwelling with a lot width of 47.5' in lieu of the required 55'. The subject property (zoned DR 5.5) and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the public hearing in support of the variance request was Henry Krus, husband of Elaine M. Krus. There were no Protestants or other interested parties in attendance. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received from the Department of Planning on May 3, 2012, indicating no opposition; however, that Department requested the following conditions be attached to any relief which might be granted:

1. Submit building elevations to the Department of Planning for review and approval prior to the issuance of any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.

2. Provide landscaping along the public road and/or preserve any existing mature vegetation and trees, if applicable.

In addition, a ZAC comment was received by the Development of Environmental Protection and Sustainability (DEPS) on May 10, 2012, indicating the property – situated in the CBCA – can comply with the criteria set forth in § 500.14 provided the CBCA regulations are followed.

Testimony and evidence revealed that the subject property is 7,600 square feet (0.174 acres) and is vacant. The Petitioner purchased the property from her parents, and kept the lot separate and independent from 2204 Lodge Forest Drive, the adjoining lot (improved with a single family dwelling) she owns with her husband. Petitioner purchased the property so that she would have the option of later constructing a retirement home on the lot.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. This case is governed by B.C.Z.R. § 304, a grandfathering provision that applies to lots that became undersized by intervening change in law. This lot was created in the 1940s, and is nearly identical in size and configuration to the many other lots in the subdivision. See Exhibit 2. The lot was created prior to March 30, 1955, and the lot satisfies the height and area regulations of the DR 5.5 zone. In addition, the Petitioner does not own sufficient adjoining land to conform this lot to the current regulations. First, she owns the adjoining lot with her husband, while she is the sole owner of 2206 Lodge Forest Drive. In addition, even if that were not the

case, the Petitioner could not “borrow” any land from the improved lot without rendering that lot even more deficient and substandard under the B.C.Z.R. Mueller v. People’s Counsel, 177 Md. App. 43 (2007). Thus, Petitioner is entitled to variance relief under B.C.Z.R. § 304.1

In the alternative, under B.C.Z.R. § 307, 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 Petitioners.

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).

Petitioner has met this test. The lot was created long before the adoption of the B.C.Z.R., and the Petitioner indicated it was one of the last of the undeveloped lots in this large subdivision. If the B.C.Z.R. were strictly enforced, the Petitioner would suffer a practical difficulty and/or hardship. Indeed, Petitioner would be unable to build on the vacant lot, which would in reality become useless.

Finally, I find that 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 lack of community opposition, and the lot is virtually identical to the other small lots in the subdivision, so this relief will in no way harm 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 Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED, this 25 day of May, 2012, by this Administrative Law Judge that Petitioners' Variance request from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a lot width of 47.5' in lieu of the required 55', be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. The Petitioner may apply for her 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 her 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. Petitioner must comply with the comments of the Department of Planning dated April 24, 2012, which are attached hereto and expressly incorporated herein. 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