

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(1628 Cape May Road)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Councilman District		
The Estate of Mildred J. Mizell,	*	HEARINGS FOR
<i>Legal Owner</i>		
Mark A. Fuchsluger,	*	BALTIMORE COUNTY
<i>Contract Purchaser/Lessee</i>		
Petitioners	*	<b>CASE NO. 2013-0145-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Robert Mizell, on behalf of the Estate of Mildred J. Mizell, legal owner, and Mark A. Fuchsluger, Contract Purchaser of the subject property. The Petitioners are requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), (1) to permit a lot width of 53 ft. lieu of the required 70 ft.; (2) To permit side setbacks of 10 and 13 ft. in lieu of the required 10 and 15 ft.; (3) To permit a sum of sides to be 23 ft. in lieu of the permitted 25 ft.; and (4) to permit any other relief deemed necessary by the Administrative Law Judge. The subject property 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 requests was Mark Fuchsluger. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no interested citizens in attendance, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the record of this case. The Department of Planning submitted a comment indicating it did not oppose the Petition, but requested that Petitioner provide (prior to permit issuance) building elevations

and landscaping along the public road.

Testimony and evidence revealed that the subject property is 15,582 square feet and is zoned DR 3.5. The lot is vacant and is 53' wide, similar to other lots in the neighborhood.

Based upon the testimony and evidence presented, I will 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).

The Petitioner failed to present any evidence concerning the uniqueness of the property, and thus the request for variance must be denied.

The Petitioner is advised that he may file a Motion to seek Reconsideration of this Order. The variance relief denied herein was based upon the requirements of B.C.Z.R. §307, as interpreted by Cromwell. But the B.C.Z.R. contains another provision (§304) that deals expressly with “undersized lots” such as the one at issue here. That provision does not require a showing of uniqueness and hardship. Mueller v. Baltimore Co., 177 Md. App. 43, 87 (2007). Provided Petitioner can satisfy the three (3) conditions set forth in B.C.Z.R. § 304 (and the DOP’s comment seems to indicate the Petitioner could make such a showing), relief would be available under that provision

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 27<sup>th</sup> day of February, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.), (1) to permit a lot width of 53 ft. lieu of the required 70 ft.; (2) To permit side setbacks of 10 and 13 ft. in lieu of the required 10 and 15 ft.; (3) To permit a sum of sides to be 23 ft. in lieu of the permitted 25 ft.; and (4) to permit any other relief deemed necessary by the Administrative Law Judge, be and is hereby DENIED.

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

Signed \_\_\_\_\_  
LAWRENCE M. STAHL  
Managing Administrative Law Judge  
for Baltimore County

LMS:sln