

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(Parcel 2, Dyer Avenue)		
4 th Election District	*	OF ADMINISTRATIVE
3 rd Councilman District		
Thomas W. & Catherine E. Beares	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0309-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Thomas W. and Catherine E. Beares, the legal owners of the subject property. The Petitioners are requesting Variance relief from Sections 303.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed single family dwelling with a front yard setback of 28.88' and a rear yard setback of 27.88' in lieu of the required front yard average of 59' ¹and rear yard of 30', 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.

Appearing at the public hearing in support of the requests was Thomas W. and Catherine E. Beares. Vincent Moskunas, who prepared the site plan, also attended the hearing. The file reveals that the Petition was properly advertised and posted as required by the Baltimore County

¹ Under B.C.Z.R. §303.1 (concerning front yard depths in D.R. zones), "no dwelling shall be required to be set back more than . . . 50 feet in DR 3.5 Zones." In addition, under the small lot table, which is applicable in this case, the front yard requirement is 30 feet. Since the regulations do not expressly state that the provisions of the small lot table trump the front yard averaging rules in § 303, I will use the larger figure; i.e., 50 feet.

Zoning Regulations. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition.

There were no substantive Zoning Advisory Committee (ZAC) comments received.

Testimony and evidence revealed that the subject property is approximately 0.23+/- acres (10,021 square feet) and is zoned DR 3.5. The Petitioners (who live on the adjoining lot) would like to market the property as a building lot, but variance relief is required before they can do so.

Based upon the testimony and evidence presented, I will grant 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 lot in question was created following Development Review Committee (DRC) approval of an internal lot line adjustment, and thus the property is unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty, given they would be unable to construct a modern dwelling on the parcel. 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 demonstrated by the lack of county and/or community opposition.

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 28th day of August, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Sections

303.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a proposed single family dwelling with a front yard setback of 28.88' and a rear yard setback of 27.88' in lieu of the required front yard average of 50' and rear yard of 30', respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

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:sln