

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2 Ian Court)		
14 th Election District	*	OF ADMINISTRATIVE
6 th Councilman District		
John Sauer, II & Michael Sauer	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0270-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by John Sauer and Michael Sauer, the legal owners of the subject property. The Petitioners are requesting Variance relief from Sections 400.1 and 427.1.B of the Baltimore County Zoning Regulations (B.C.Z.R.) (1) to permit an existing accessory building (shed) to be located in the side yard (street side) in lieu of the required third of the rear yard farthest removed from any street; (2) to permit the erection of a 6 ft. high residential occupancy fence in lieu of the maximum 42 in. high fence, wherein the rear yard of a lot adjoins the front yard of another; and (3) to amend the Final Development Plan (FDP) for Trumps Mill Estates, Lot 19 only.

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 John Sauer. The file reveals that the Petition was properly advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition.

The only substantive Zoning Advisory Committee (ZAC) comment was submitted by the

Department of Planning (DOP), which is supportive of the requests.

Testimony and evidence revealed that the subject property is approximately 0.131 acres and is zoned DR 3.5. The Petitioner would like to construct a new shed and fence on the property. To do so requires zoning relief.

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. As shown on the site plan, the Petitioners' lot is of irregular dimensions and has frontage along two public streets. As such, it is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty, given they would be unable to construct the proposed improvements. 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 9th day of July, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations ("B.C.Z.R") (1) to permit an existing accessory building (shed) to be located in the side yard (street side) in lieu of the required third of the rear yard farthest removed from any street; (2) to permit the erection of a 6 ft. high residential occupancy fence in lieu of the

maximum 42 in. high fence, wherein the rear yard of a lot adjoins the front yard of another; and (3) to amend the Final Development Plan (FDP) for Trumps Mill Estates, Lot 19 only to reflect the zoning relief granted herein, 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