

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(613 George Avenue)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Councilman District		
Charlene M. and William Klapka, Jr.	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2014-0001-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 Jason T. Vettori, Esquire, on behalf of the legal owners 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.) as follows: (1) to permit a minimum lot width of 50 ft. in lieu of the minimum lot width of 55 ft.; and (2) to permit a minimum individual side yard setback of 5 ft. in lieu of the minimum width of an individual side yard setback of 10 ft. 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 William and Charlene Klapka. Jason T. Vettori, Esquire with Smith, Gildea & Schmidt, LLC, appeared as counsel and represented the Petitioners. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of opposition. The file reveals that the Petition was properly advertised and posted as required by the Baltimore County Zoning Regulations.

The only Zoning Advisory Committee (ZAC) comment received was from the Department of Planning (DOP), which does not oppose the Petition, but requested that Petitioners submit building elevations of the proposed dwelling to the DOP for review and approval prior to the

issuance of any building permits.<sup>1</sup>

Testimony and evidence revealed that the subject property is approximately 7,500 square feet and is zoned DR 5.5. Mr. Klapka has lived at the subject property since he was six (6) years old and would like to construct a single-family dwelling on the adjoining vacant lot he also owns. In making application for that relief, it was discovered that the width and setbacks of his lot (613 George Avenue) are deficient.

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 lots were created before the adoption of the B.C.Z.R., and they are thus unique.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty, since they would be unable to construct a dwelling on the lot. 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 opposition. In addition, as noted by the DOP, nearly all of the homes in the neighborhood are constructed on 50 ft. wide lots, and thus the relief sought would be in keeping with the pattern of the community.

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<sup>1</sup> 613 George Avenue is improved with a single-family dwelling constructed in 1956. 611 George Avenue (the subject of Case No. 2014-0002-A which was heard at the same time) is an unimproved lot for which Petitioners seek variance relief to construct a single-family dwelling. The DOP's comment pertains to Case No. 2014-0002-A.

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 4<sup>th</sup> day of September, 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”) as follows: (1) to permit a minimum lot width of 50 ft. in lieu of the minimum lot width of 55 ft.; and (2) to permit a minimum individual side yard setback of 5 ft. in lieu of the minimum width of an individual side yard setback of 10 ft., be and is hereby GRANTED.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:dlw