

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(7209 Verbena Road)		
3 rd Election District	*	OFFICE OF ADMINISTRATIVE
2 nd Council District		
Floyd and Renay Rothstein	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2016-0076-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed for property located at 7209 Verbena Road. Petitioners are requesting variance relief from Sections 205.2 and 205.3 of the 1969 Edition of the Baltimore County Zoning Regulations (B.C.Z.R.): (1) to permit a front yard setback of 24 ft. from the front lot line in lieu of the required 40 ft. and a front yard setback of 50 ft. from the centerline of Verbena Road in lieu of the required 65 ft.; and (2) to permit a side setback of 3 ft. in lieu of the required 15 ft.

This matter was originally filed as an Administrative Variance, with a closing date of October 19, 2015. On October 14, 2015, neighbors Michael and Yelena Shirkin requested a hearing, which was held on Monday, November 30, 2015 at 10:00 AM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson. Adam Rosenblatt, Esq. represented the Petitioners and J. Carroll Holzer, Esq., represented the neighbors. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

The subject property is approximately 18,200 square feet and is zoned DR 2. The property is improved with a single family dwelling constructed in 1975. Petitioners purchased the property in July, 2015, and would like to construct a garage addition, as shown on the elevation drawings marked as Petitioners' Exhibit 2. To do so, variance relief is required.

As discussed at the hearing, the Petitioners modified somewhat their original variance request (which was opposed by the Department of Planning (DOP)) to increase the front and side setbacks proposed. The DOP submitted a revised comment wherein that agency opined that the “site plan represents a good faith response on the part of the petitioner to recommendations made by the Sector Planner.” I concur, but that is insufficient to justify a variance.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity necessitates variance relief; and
- (2) If variance relief is denied, petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have not satisfied these requirements. Mitchell Kellman, who was accepted as an expert in land use and the zoning regulations, testified the property is trapezoidal in shape, but many of the lots in the vicinity are similarly shaped. While there is a slight grade change across the site, as noted by Mr. Kellman, that condition exists on other properties in the area as well. Finally, to the extent there is any hardship, I believe it is self-imposed. Petitioners purchased the house recently and could have investigated beforehand whether a variance would be required to construct an attached garage. Had they done so, they would have learned that a variance would be required, and they could have (as many purchasers do) made the contract contingent upon the grant of the variance.

I am sympathetic to the Petitioners’ plight, and recognize that there are inconsistencies in the County’s variance procedure and process. On the one hand, owners of dwellings (in which they reside) are permitted to obtain an “administrative variance” permitting a relaxation of the height, setback or area zoning regulations. B.C.C. § 32-3-303. While the law purports to require

that a petitioner establish (by way of an affidavit) that the property is unique and that she will experience a practical difficulty if the regulations were strictly construed, the reality is that 95% or greater of these requests are granted without much scrutiny. And that is often the case as well for “unopposed” variance requests for which public hearings are held.

But the reality is the procedure is quite different when, as here, neighbors or the community oppose the request and through counsel or otherwise insist upon a rigorous application of the variance standard. In those circumstances, the petitioner faces an uphill battle. In fact, I was unable to locate a Maryland appellate court opinion from the last twenty years which upheld the grant of a variance. Under Maryland law, variances should be granted “sparingly” since it is “an authorization for [that] . . . which is prohibited by a zoning ordinance.” Cromwell v. Ward, 102 Md. App. 691, 699 (1995).

THEREFORE, IT IS ORDERED, this **3rd** day of December, 2015 by the Administrative Law Judge for Baltimore County, that the Petition for Variance from B.C.Z.R. (1969 Ed.) Sections 205.2 and 205.3: (1) to permit a front yard setback of 24 ft. from the front lot line in lieu of the required 40 ft. and a front yard setback of 50 ft. from the centerline of Verbena Road in lieu of the required 65 ft.; and (2) to permit a side setback of 3 ft. in lieu of the required 15 ft., be and is hereby DENIED.

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