

IN RE: PETITION FOR VARIANCE
(1134 Susquehanna Avenue)
15th Election District
6th Council District
Michelle Lascola
Legal Owner
Petitioner

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2016-0087-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed for property located at 1134 Susquehanna Avenue. The Petitioner is requesting variance relief from Section 417.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit open access strips of 13 ft. and 15 ft. between the pier and piles of adjoining property owners in lieu of the required 20 ft., and 4 ft. and 6 ft. setbacks from the established divisional property line in lieu of the required 10 ft. for new pier, platform, and boatlifts.

This matter was originally filed as an Administrative Variance, with a closing date of October 26, 2015. On October 25, 2015, neighbor Paul Crist requested a hearing. The hearing was held on Monday, November 30, 2015 at 11:00 AM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Neighbors residing on both sides of Petitioner's property appeared and opposed the request.

The subject property is approximately 16,713 square feet and is zoned DR 3.5. Petitioner purchased the property in 2013 and constructed a single family dwelling on the waterfront lot. She would like to construct a pier and mooring piles to provide boat access to Frog Mortar Creek and the Bay. To do so requires variance relief.

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

Petitioner has not satisfied this standard. Petitioner's waterfront property is of a similar size, shape and topography as many other lots in the immediate vicinity. Indeed, Petitioner did not submit any evidence which would permit a factual finding to the contrary.

The reality is that few properties will qualify for variance relief if the legal requirements are faithfully applied. In many cases, as noted by Mr. Billingsley, neighbors amicably agree upon a satisfactory resolution of a zoning request, and in those circumstances variances are usually granted freely. But when a neighbor opposes a request, a petitioner must prove the necessary legal requirements, which are exceedingly difficult to satisfy. In fact, it does not appear as if a Maryland appellate court has within the last twenty years upheld the grant of a variance petition. Maryland law provides that 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).

As noted at the hearing, the owners at 1200 Susquehanna Ave. have lived at their property for many years, and the pier and mooring piles have likewise been in place for many years. Under these circumstances I would be reluctant to grant Petitioner relief which would negatively impact these owners, who indicated at the hearing they are opposed to the requests.

A somewhat different scenario exists in regard to the adjoining neighbor at 1132 Susquehanna Ave. As discussed at the hearing, both Petitioner and Mr. Crist (who lives at 1132

Susquehanna) purchased their lots and constructed new single family dwellings in the last few years. At some time in 2013, Petitioner and Mr. Crist met with a contractor to discuss piers on both of their properties. The contractor prepared a plan (Exhibit 10) which contemplated 100 foot piers on both of these properties. Ms. Lascola testified she deferred plans for her pier until she completed her home. In the interim, Mr. Crist applied for and received permits to construct his pier, which was completed last year.

According to the site plan, Mr. Crist's pier is over 100 feet in length, and was constructed in violation of the applicable setback requirements set forth at B.C.Z.R. §417 and Appendix J of the Regulations. Petitioner contends that the plan submitted on behalf of Mr. Crist (Ex. 6) for the permit to construct the pier was not to scale and was otherwise deficient, and that the County improperly granted the permits for this project. While it is true that the pier and piles have been constructed (though a planned boat lift has not), that may not be the end of the story. Under Maryland law, an owner does not acquire a vested right in a permit issued in violation of a zoning ordinance.

In Town of Berwyn Heights v. Rogers, 228 Md. 271 (1962), Phillip Rogers, a home builder, began construction of a residence in Berwyn Heights, which is in Prince George's county. Mr. Rogers did not begin construction until he had received building permits from both the county and the Town of Berwyn Heights, and the construction was in compliance with the permits. However, the Town of Berwyn Heights concluded that a mistake had been made in the issuance of the permits, such that the residence was being built in violation of a zoning ordinance. The Town of Berwyn Heights filed suit to enjoin the construction project. After considering the case, the court held that "the issuance of an illegal permit creates no 'vested rights' in the permittee." Id. at 279-80.

In a more recent case from Baltimore County, Maryland's highest court held that an owner did not have a vested right to conduct on his property a business for breeding and selling snakes, even though the County granted all required permits and the owner had completed construction. Marzullo v. Kahl, 366 Md. 158, 191-93 (2001). It is true that the above case concerns only 1134 Susquehanna Ave., not the property at 1132 owned by Mr. Crist, and whether or not the permits issued to Mr. Crist were in violation of the Regulations will not be determined in this matter. Even so, these are adjoining waterfront properties, and the establishment of divisional property lines and the legal rights associated therewith necessarily involve both properties. Disputes such as this one can often lead to protracted litigation, which is expensive and unproductive for all involved. While the parties may not be able to amicably resolve this matter, they should put forth a good faith effort to do so.

THEREFORE, IT IS ORDERED, this **3rd** day of December, 2015 by this Administrative Law Judge, that the Petition for Variance to permit open access strips of 13 ft. and 15 ft. between the pier and piles of adjoining property owners in lieu of the required 20 ft., and 4 ft. and 6 ft. setbacks from the established divisional property lines in lieu of the required 10 ft. for new pier, platform, and boatlifts, 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