

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(8347 Tally Ho Road)		
8 th Election District	*	OFFICE OF ADMINISTRATIVE
2 nd Council District		
Brian C. & Rachel M. Bauder	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2016-0295-A

* * * * *

OPINION AND ORDER

This matter (which originated as a petition for an administrative variance) comes before the Office of Administrative Hearings (OAH) as a Petition for Variance upon a request for hearing filed by the Seminary Ridge Owner’s Association (the “Association”). The Petition references B.C.Z.R. § 1B02.3.B, and seeks variance relief to permit a garage addition with a side yard setback of 6’ in lieu of the required 15’. The subject property is shown on Plat Four of Seminary Ridge, which was approved by the Planning Board on March 9, 1970. The plat was recorded among the land records of Baltimore County on March 12, 1970. Since the Petitioners’ lot is within a “recorded residential subdivision,” the Regulations specify that the applicable yard widths are those in effect at the time the plan was approved by the Planning Board in 1970. B.C.Z.R. §§1B02.3.A.1 & 1B02.3.B.

The Association believes the applicable standard requires a minimum 30’ setback from side building face to side building face in the D.R.2 zone. After discussions between the parties, Petitioners agreed to amend their request, and now seek approval for a 27’ side building face to side building face setback in lieu of the required 30’. In a letter dated July 7, 2016, the Association indicated it supports the “amended request for the variance of 27’ in lieu of the required 30’.”

Having reviewed the Regulations, I believe both standards are applicable. The applicable side yard setback is found at B.C.Z.R. (1964 Ed.) §205.3, which required a 15' side yard for dwellings in the R.20 zone, the predecessor to the D.R.2 zone. This regulation was in effect at the time the Planning Board approved the Seminary Ridge plat in 1970. The 30' building face setback is found in the C.M.D.P., p.36. The Regulations specify that for existing developments such as this one "similar standards" codified under Section 504 (i.e., the C.M.D.P.) would be applicable. The C.M.D.P. does not prescribe a side yard setback standard, only the side building face setback. Since these are not contradictory or mutually exclusive requirements, I believe both should be observed under B.C.Z.R. §1B02.3.B.

Turning to the specifics of this matter, the subject property is approximately 18,762 square feet and is zoned D.R. 2. As shown on the site plan (Petitioners' Ex. 1), the property is improved with a single-family dwelling, and Petitioners propose to construct a garage addition on the side of the dwelling.

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 met this test. The subject property has irregular dimensions and is therefore unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the garage addition. 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 Baltimore County and/or community opposition. It appears the neighboring dwelling at 8349 Tally Ho Road is situated 20' from the boundary with the subject property. As such, and to satisfy the agreed-upon 27' building face setback, the side yard variance will be granted for 7' in lieu of the required 15'.

THEREFORE, IT IS ORDERED, this 5th day of August, **2016**, by this Administrative Law Judge, that the Petition for Variance to permit a garage addition with a side yard setback of 7 feet in lieu of the required 15 feet, and with a side building face to side building face setback of 27 feet in lieu of the required 30 feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject 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