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|-------------------------------------|---|-----------------------------|
| <b>IN RE: PETITION FOR VARIANCE</b> | * | BEFORE THE                  |
| <b>(3941 North Point Road)</b>      |   |                             |
| 15th Election District              | * | OFFICE OF ADMINISTRATIVE    |
| 4th Council District                |   |                             |
| RJ & Susinn Tosato                  | * | HEARINGS FOR                |
| <i>Legal Owners</i>                 |   |                             |
| Robert Griffin                      | * | BALTIMORE COUNTY            |
| <i>Contract Purchaser</i>           |   |                             |
| <br>                                |   |                             |
| Petitioners                         | * | <b>CASE NO. 2020-0121-A</b> |
| <br>                                |   |                             |
| * * * * *                           |   | * * *                       |

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by RJ and Susinn Tosato, Legal Owners and Robert Griffin, Contract Purchaser for property located at 3941 North Point Road. The Petitioner is requesting variance relief from the Baltimore county Zoning Regulations (“BCZR”) § 1B02.3.C.1, to allow an existing dwelling to remain (partially constructed, building permits not obtained in advance) on a lot with a lot width of 50 ft. in lieu of the required 55 ft., side setbacks of 4 ft. and 5 ft. in lieu of the required 10 ft. each, and rear setback of 5 ft. in lieu of the required 30 ft.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 11.

Substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Environmental Protection and Sustainability (“DEPS”) which indicates that the subject property is located with the Chesapeake Bay Critical Area (“CBCA”). A ZAC comment was also received from the Department of Planning (“DOP”). They oppose the request.

RJ and Susinn Tosato and Robert Griffin appeared in support of the petitions. Robert

Zacherl, the President of the Wells McComas Citizens Improvement Association appeared in opposition and submitted a community petition opposing the requested variance relief. (Protestants' Exhibit 1).

The subject property is approximately 6500 square feet and is zoned DR 5.5. A code enforcement citation is pending because Petitioners conducted extensive construction of a pole barn building on the site without obtaining any building permits. Petitioners now seek substantial variance relief for the building. Petitioners testified that when they purchased the property in 2012 it was zoned ML. Mr. Tosato testified that at the time he was informed by the zoning office that he needed to maintain only 3 ft. setbacks from all property lines. He further testified that he was unaware that the property had been rezoned DR 5.5 in 2016. He also testified that he didn't think he needed any building permits because he was constructing a pre-fab building. He testified that his father is building the structure as a residence. He acknowledged that there is nothing unique about the lot that would differentiate it from other lots on the street.

The general rule is that "the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." *Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43, 71(2007). This is because "a variance is an authorization for that which is prohibited by a zoning ordinance." *Cromwell v. Ward*, 102 Md. App. 691, 699 (1995), and because "citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations." *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). Therefore, "[t]he burden is on the applicant to show facts to warrant a variance," and "the specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant." *Mueller v. People's Counsel for Baltimore County*, 177 Md. App. at 70.

Under BCZR § 307, and Maryland common law, in order to be entitled to variance relief

the Petitioners must satisfy a two-step legal analysis, 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 is what necessitates the requested variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward, supra*. Finally, “unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship.” *Mueller, supra*, 177 Md. App. at 70.

At the hearing the undersigned asked the Petitioner directly whether there is anything unique about his property as compared with the surrounding properties. To his credit, Mr. Tosato was forthright in conceding that there is not. The Petitioners have therefore failed to meet the first prong of the legal analysis. Further, even if I were to reach the second prong, the record evidence does not support a finding that Petitioners’ need for this variance is “substantial and urgent.” In the instant case, the hardship arises out of the Petitioner’s own disregard of the building permit process. A “self-created” hardship is not a proper justification for granting a variance. *Mueller, supra*, 177 Md. App. at 90-91. While I am somewhat sympathetic to the financial hardship this denial will cause the Petitioners, the law does not allow me to grant the requested variances. To the contrary, the neighboring property owners are entitled to “strict enforcement of the existing zoning regulations.” *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965).

THEREFORE, IT IS ORDERED, this **14th** day of **October 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations § 1B02.3.C.1, to allow an existing dwelling to remain (partially constructed, building permits not obtained in advance) on a lot with a lot width of 50 ft. in lieu of the required 55 ft., side setbacks of 4 ft. and 5 ft. in lieu of the required 10 ft. each, and rear setback of 5 ft. in

lieu of the required 30 ft. is hereby DENIED.

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

Signed \_\_\_\_\_  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/dlm