

OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND

APPLICANTS: Albert Janocha and Vikki Janocha
2342 Sykesville Road
Westminster, Maryland 21157

ATTORNEY: Thomas F. Stansfield, Esq.
One Court Place
Westminster, Maryland 21157

REQUEST: A variance reducing the minimum front setback for
the dwelling under construction

LOCATION: 597 South Center Street in Election District 7

BASES: Article 7, Section 7.5; Article 15, Section 15.5;
Ordinance 1E

HEARING HELD: June 1, 1989

On June 1, 1989 the Board of Zoning Appeals heard testimony and received evidence concerning the request for a variance reducing the minimum front setback for the dwelling under construction at 597 South Center Street by Albert Janocha and Vikki Janocha. The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board of Zoning Appeals will authorize the requested variance. The pertinent findings include the following facts.

FINDINGS OF FACT

On February 23, 1989 Mr. Janocha applied for a building permit and zoning certificate for construction of a one story bi-level single family dwelling at 597 South Center Street. The building permit and zoning certificate were approved by the Bureau of Zoning Administration on March 13, 1989, and were subsequently approved and issued by the Bureau of Permits and Inspections on March 30, 1989. The lot is zoned "R-20,000" Residence District as shown on zoning map 46A.

The proposed front yard setback, as noted on building permit 89-0405 was 46 feet from South Center Street. The minimum required front yard setback was noted as 40 feet. The surveyor's plot plan filed with the permit application confirms proposed compliance with the minimum setback and yard requirements for single family dwellings in "R-20,000" Residence District. As shown by the surveyor's plot plan the configuration of the lot is irregular, with the South 69 degrees 49 minutes and 12 seconds West boundary line of 34.97 feet fronting on the intersection of Washington Road (Md. Route 32). The principal front property

line is an arc of 189.56 feet fronting solely on South Center Street.

Mr. Janocha testified that excavation of the site was initiated for construction of the home following issuance of the building permit and zoning certificate. Shortly thereafter, Mrs. Gifford, an adjoining property owner complained to him about the location of the home being too close to her property. In an effort to resolve the complaint, Mr. Janocha decided to locate the dwelling closer to South Center Street, thereby increasing the distance between the dwelling and Mrs. Gifford's property. However, in remeasuring for the new location, Mr. Janocha measured from the edge of the paved section of South Center Street, incorrectly believing that the edge of the street was the property line of the lot. As shown by the location survey, Applicant's Exhibit 2, this placed the southwesterly corner of the dwelling about 38.2 feet from the front property line (46.2', plus or minus, - 8' = 32.8') and the southeasterly corner about 31.1 feet (39.1', plus or minus, - 8' between the edge of the curb and the front property line = 31.1'). As the surveyor's measurements appear to the perpendicular to the dwelling and not the front property line, the closest distance from the dwelling to the front property line will be slightly less than those noted above. The respective front setbacks of the southwesterly and southeasterly corners of the dwelling are likely to be closer to 37 feet and 30 feet.

Parties in opposition to the request cited ponding of storm water on the lot, particularly in the area of the dwelling and storm water runoff; and, the risk of vehicles running off of South Center Street and colliding with the dwelling due to the reduced front yard setback. The ponding problem will be resolved by grading, and the problems of storm water runoff rests with Mr. and Mrs. Janoca and Bureau of Permits and Inspections--not this Board. The concern of damage to the dwelling from vehicles is of little merit, regardless of the reduced front yard setback.

APPLICABLE LAW

Article 20, Section 20.39 of Ordinance 1E defines a variance as:

"...a relaxation of the terms of the Zoning Ordinance where such variance will be contrary to the public interest and where, owing to conditions peculiar to the property and not the results of the actions of the applicant, a literal enforcement of the Ordinance would result in unnecessary or undue hardship."

Article 15, Exceptions and Modifications Sections 15.0, Generally and Section 15.5, Variance read respectively:

"The regulations specified in this ordinance shall be subject to the following exceptions, modifications, and interpretations."

"The Board may authorize, upon appeal, in accordance with Section 17.2, variances from height, lot area, lot width, yard regulations, parking space requirements, sign regulations, and distance requirements specified in Section 4.12 and Section 14.31(c)4. The Board may grant such variance only in cases where the strict compliance with the terms of this ordinance would result in practical difficulty and unreasonable hardship, and only if in strict harmony with the spirit and intent of such regulations and only in a manner so as to grant relief without substantial injury to public health, safety and general welfare."

Article 17, Board of Appeals; Section 17.2, General powers, paragraph (c) states:

"(c) To authorize, upon appeal in special cases, such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions, the enforcement of the provisions of this ordinance will result in unwarranted hardship and injustice and which will most nearly accomplish the purpose and intent of the regulations of the Zoning Ordinance."

REASONING

The lot is of irregular configuration and is affected by storm water drainage. Neither factor significantly restricts establishment of the dwelling and residential use of the premises. Although a question was raised regarding compliance with the minimum rear yard requirements for the dwelling, the Board agrees with the Zoning Administrator's interpretation and determination that the dwelling complies with the requirement. With regard to the variance requesting reduction of the minimum required front yard setback, the Board believes that Mr. Janocha conscientiously attempted to resolve the complaint of the adjoining property owner, Mrs. Gifford, and that the circumstances justify relaxation of the minimum required front yard setback for the dwelling to preclude practical difficulty and unreasonable hardship that would otherwise occur. In

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addition, there is no probative evidence that authorization of the variance will unduly affect the adjoining properties or public interest.

CONCLUSION

The requested variance is hereby authorized.

June 15, 1989
Date

John Totura
John Totura, Chairman