JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

August 18, 2021

Elliott Morales – ewmg82@gmail.com

RE: Petition for Variance
Case No. 2021-0174-A
Property: 7628 Philadelphia Road

Dear Mr. Morales:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm
Enclosure

c: Patrick Richardson - rick@richardsonengineering.net

IN RE: PETITION FOR VARIANCE **(7628 Philadelphia Road)** 14th Election District 6th Council District Elliott Morales Legal Owner	*	BEFORE THE
	*	OFFICE OF ADMINISTRATIVE
	*	HEARINGS OF
	*	BALTIMORE COUNTY
Petitioner	*	**CASE NO: 2021-0174-A**

* * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Variance filed by Elliott Morales (the "Petitioner") for property located at 7628 Philadelphia Road, (the "Property"). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations ("BCZR") §1B02.3.C.1 to permit a 18 ft. front yard setback in lieu of the required 25 ft., and to permit a 22 ft. rear yard setback 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. The Petitioner appeared at the hearing in support of the Petition along with Patrick "Rick" Richardson, P.E. of Richardson Engineering, LLC who prepared a site plan (the "Site Plan"). (Pet. Ex. 1). There were no Protestants or interested citizens that appeared at the hearing.

Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP") and the Department of Environmental Protection and Sustainability, ("DEPS") which agencies did not object to the Petition. Department of Public Works and Transportation ("DPWT") noted that the DPWT Design Section requires a dedication of a 50 ft. right-of-way along the frontage of Longview Avenue prior to granting a variance. Additionally, the Office of Zoning Review ("OZR") opposed the reorientation of the single family dwelling and variances,

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By DMugnon

finding that the relief is an attempt to bypass the lot width and setbacks required for the Conversion of Dwellings under BCZR, §402.

The Property is 0.45 ac. +/- (19,755 sq. ft.) and is improved with a single family dwelling built in 1909. (Pet. Exs. 1, 2). It is a corner lot at the intersection of Philadelphia Rd. and Longview Avenue. (Pet. Ex. 3). The home has an address of, and faces, Philadelphia Rd. It is zoned Density Residential (DR 5.5). (Pet. Ex. 4). Mr. Morales testified that he has resided in the home for the last five (5) years having purchased the Property in 2013. (Pet. Ex. 2). He will continue to reside in the home, but would like to construct an addition to accommodate two (2) rental units, each with its own cooking facilities and bathrooms.

Mr. Morales explained that, because of the proposed addition, OZR instructed him to reorient the front of the home to Longview Avenue. This would also require a change of address. Building elevations of the proposed addition show three (3) entry doors facing Longview Avenue, two (2) doors at ground level, and one (1) door accessed via stairs leading up to a second floor. (Pet. 5A-5C). The front door facing Philadelphia Rd. would also remain.

Mr. Richardson explained that the Property is a narrow site measuring 272 ft. deep x 75 ft. wide. He stated that if the Petitioner is required to reorient the front of the home to Longview Avenue, the variance relief as requested, is needed under BCZR, §1B02.3.C (the "Small Lot Table") for a new front yard setback of 18 ft. in lieu of 25 ft., and a 22 ft. rear yard setback in lieu of 30 ft. In addressing the OZR comment regarding BCZR, §402.1, Mr. Richardson first opined that OZR's width calculation should be a total of 95 ft. (80 ft. for a 'duplex' (2 family units) with an additional 15 ft. for the third family unit). He stated that OZR's front lot width calculation of 105 ft. (90 ft. + 15 ft.) was incorrect because the home will not be converted to a 'semi-detached' home.

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As such, Mr. Richardson testified that if the front of the home is changed to Longview Rd, OZR is correct that the lot width at the front building line under BCZR, §402.1 will be met at 278.96 ft., and the required minimum one side yard setback and sum of side yards will be met as the side yards will measure 62 ft. +/- and 143 ft. +/-. On the other hand, Mr. Richardson agreed that, if the front of the home remains facing Philadelphia Rd., the lot width at front building line under BCZR, §402.1 cannot be met because the lot width is at most 72.73 ft. (rear). In addition, under that scenario, he noted that the minimum side yard setback for one side, for a corner lot, could not be met under BCZR, §402.1 because it requires one side to be 25 ft., and the sum of side yard setbacks to be 40 ft. The proposed addition will have 22 ft. on one side and 17 ft. on the other (39 ft. total).

Mr. Richardson did confirm that the Property does meet the required lot area of 13,000 sq. ft. under BCZR, §402.1.

In regard to the DPWT Comment, Mr. Richardson testified that, in his experience, road widening has never been required for an addition to a single family home and that, it would be economically impractical for a property owner to incur that cost. Mr. Richardson testified that a road widening might be required for a development but not a single family home.

Under the Zoning Commissioner's Policy Manual ("ZCPM"), Section 402 '*Conversion of a Single Family Dwelling*', explains that conversions of single family dwellings into apartments are permitted in DR zones subject to dimensional and area standards as set forth in BCZR, §402.1:

> Conversions of single family homes in the DR (Density, Residential) zones into apartments shall be determined in a case by case review.
>
> * * * *
>
> <u>Background</u>
>
> Prior to the adoption of the 1955 Baltimore County Zoning Regulations,

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many of the homes were built on a much larger scale (both dwelling and lots) than was common at that time. The County Council took this factor into account when in 1955 they adopted Section 402, BCZR which established setback, lot width and area standards as special conditions to allow conversions of these large single-family homes into apartments, as a matter of right.

Under the authority of Section 402, conversions of existing one family dwellings to multi-family dwellings are permitted in the DR zones, subject to the dimensional and area standards and the following policy:

402.1 Eligibility

A dwelling may be converted in multi-family occupancy only after a five year occupancy as a single family dwelling.

A. Conditions

(1) If the setbacks or the lot width standards are deficient, a variance (public hearing) may be requested.
(2) If the lot area is deficient, the conversion cannot be approved. (Lot area can affect density and density cannot be variance).
(3) Conversions are not subject to the Residential Transition Area (RTA) standards.

While the Petition did not seek variance relief under BCZR, §402.1, this may be due to the Petitioner's understanding that OZR was requiring the front of the home to be reoriented to Longview Avenue, which would then need variance relief under the Small Lot Table. However, I agree with the OZR Comment that reorienting the front of the home to Longview is bypassing the more restrictive lot width and setbacks requirements for converting this single family dwelling to apartments under BCZR, §402. ZCPM provides that if the setbacks or lot width standards are deficient, a variance may be requested under BCZR, §402. As a result, I will grant Petitioner's request to amend the Petition at the hearing, to include, as alternative variance relief, for the lot width at front building line as well as the side yard setbacks under BCZR, §402.

Based on the evidence, I find that the conversion of this single family dwelling in the DR

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5.5 zone, which is permitted by right (provided that the BCZR, §402 conditions are met), should be granted. The SDAT information (Pet. Ex. 2) confirms that the Petitioner has resided in the home for more than 5 years (since 2013). The Site Plan and Mr. Richardson's testimony in support thereof, verifies that the Property, (which has a net area of 19,755 sq. ft.), meets the minimal lot area of 13,000 sq. ft. (for 3 families) under BCZR, §402.1. Lastly, I find that the front of the home for this Property should remain Philadelphia Rd. as it has been since 1908. The front door will remain as an entrance notwithstanding the addition of multiple entrances on the side of the home. This will also eliminate the need to change the address but will require variance relief for the lot width at the front building line and for the side yard setbacks.

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 must necessitate 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).

In find that the Property is uniquely shaped in that it is long and narrow, wider in the rear (72.73) and narrow in the front (71.00). The house, built prior to the BCZR in 1955, is also long and narrow and sits primarily on the back half of the Property. The Property is also peculiar because Longview Avenue (identified as a 30 ft. right-of-way), cuts across the eastern corner of the Property boundary line as it intersects with Philadelphia Rd. (Pet. Ex. 1). Petitioner proposes a two (2) story addition on the rear half to connect with the existing driveway. (Pet. Ex. 1). The Property is not able to meet the 95 ft. lot width at the front building line (duplex with one additional family), or the minimum side yard setbacks for one side on a corner lot, and/or the sum of the side yard setbacks under BCZR, §402.1.

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Because of the unique characteristics of the Property, I find that the Petitioner would suffer a practical difficulty and unreasonable hardship if the proposed lot width at the front building line, and proposed minimum side yard setbacks under BCZR, §402.1, are not granted because the Petitioner would not be able to construct the addition which is need to convert the single family home into three (3) apartments. Granting the relief is in the spirit and intent of the ZCPM which highlights the County Council's intent to allow the conversion of large single family homes into apartments. I also find that the requested variance relief under BCZR, §402.1 can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the lack of opposition.

In regard to DPWT's Comment that DPWT Highway Design Section which allegedly requires a dedication of a 50 ft. right-of-way along the frontage of Longview Avenue and notwithstanding DPWT's note that the dedication must be finalized prior to the variance approval herein, I will condition the Order on the Petitioner working with DPWT to resolve that issue.

THEREFORE, IT IS ORDERED, this **18th** day of **August 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR §1B02.3.C.1 to permit a 18 ft. setback in lieu of the required 25 ft. front yard setback, and to permit a 22 ft. setback in lieu of the required 30 ft. rear yard setback respectively is hereby AMENDED to include, *in the alternative*, variance relief from BCZR, §402.1 for the lot width at the front building line of 72.73 ft. in lieu of the required 95 ft., for minimum side yard setback for one side on a corner lot of 22 ft. lieu of 25 ft., and for sum of side yards for a corner lot of 39 ft. in lieu of 40 ft., and

IT IS FURTHER ORDERED, that Petition for Variance pursuant to BCZR, §1B02.3.C.1 to permit a 18 ft. setback in lieu of the required 25 ft. front yard setback, and to permit a 22 ft. setback in lieu of the required 30 ft. rear yard setback respectively is hereby DENIED; and

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IT IS FURTHER ORDERED, that Petition for Variance pursuant to BCZR, §402.1 for the lot width at the front building line of 72.73 ft. in lieu of the required 95 ft., for minimum side yard setback for one side on a corner lot of 22 ft. lieu of 25 ft., and for sum of side yards for a corner lot of 39 ft. in lieu of 40 ft. be, and they are hereby, GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his 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, Petitioner would be required to return the subject property to its original condition.

2. The front of the house shall remain facing Philadelphia Rd. and the address of 7628 Philadelphia Rd. will remain the same.

3. Petitioner must work with DPWT in regard to DPWT Comment contained in an email from DPWT dated June 21, 2021, a copy of which is attached hereto and made a part thereof.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm

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Debra Wiley

From:	Debra Wiley
Sent:	Wednesday, August 18, 2021 5:28 PM
To:	'Elliott Morales –'
Cc:	'Richardson, Patrick'; Donna Mignon; County Council; Henry Ayakwah; Jeffery Livingston; Jenifer G. Nugent; Peoples Counsel; Vishnubhai K Desai
Subject:	Decision - Case No. 2021-0174 - 7628 Philadelphia Road - Elliott Morales
Attachments:	Ltr. 2021-0174-A - Conversion sfd - duplex.pdf; 2021-0174-A - Conversion sfd - duplex.pdf; 2021-0174-A DPWT.ZACComment.pdf

Good Afternoon,

Please find attached ALJ Murphy's decision in the above-referenced matter.

Have a great evening.