IN THE MATTER OF MARK and HADASSAH KOHEN LEGAL OWNERS AND PETITIONER FOR VARIANCE ON THE PROPERTY LOCATED AT 6716 CHIPPEWA DRIVE	* * *	BEFORE THE BOARD OF APPEALS OF
3RD ELECTION DISTRICT 2ND COUNCIL DISTRICT	*	BALTIMORE COUNTY
	*	Case No. 22-176-A

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OPINION

This case comes before the Board of Appeals for Baltimore County ("Board") as an appeal of Baltimore County Administrative Law Judge ("ALJ"), Maureen Murphy's September 16, 2022, Opinion and Order denying a Petition for Variance filed by Mark and Hadassah Kohen for property located at 6716 Chippewa Drive, requesting variance relief from the Baltimore County Zoning Regulations ("BCZR") §1B02.3.B (Section III.C.3 of the 1954 Zoning Regulations) to approve an addition on the right side of a dwelling with a side setback of four (4) feet in lieu of the minimum required side setback of ten (10) feet.

A *de novo* hearing was held before this Board on February 16, 2023, via WebEx. Petitioner, Mark Kohen appeared *pro se*. No one appeared in opposition. A Public Deliberation was held on April 27, 2023, via WebEx.

Background

The subject property ("property") is located at 6716 Chippewa Drive. The property is 7,590 +/- sq. ft. and is improved with a 1,649 +/- sq. ft., two (2) story home built around 1955. Petitioners purchased the property in 2022. The property has a driveway and a carport.

On or about July 26, 2022, Petitioners applied for a variance to construct an addition on the right side of a dwelling with a side setback of four (4) feet in lieu of the minimum required

side setback of ten (10) feet. Petitioners applied for the variance administratively. They did not request a hearing where testimony could be presented. In the affidavit portion of the Administrative Variance, Petitioner's simply stated, "A variance is being requested because the size of the existing house and lot provides a practical difficulty for the family. An addition is being proposed to add additional living space."

On or about September 6, 2022, Administrative Law Judge, Maureen E. Murphy, denied Petitioner's Administrative Variance request. The denial was based on the fact the Petitioner's Administrative Variance request spoke nothing of the uniqueness of the subject property. Petitioners filed a timely appeal.

During the hearing in front of this Board, Petitioner, Mark Kohen, testified that he resides in the home with his wife and five (5) children. The home currently has three (3) bedrooms. Petitioners desire to enclose their carport with an addition. This addition would be 288 sq. ft. +/- and would be for a bedroom and a bathroom. This would provide his family with some much-needed space. Petitioner described the uniqueness of his property which prevents him from building an addition in the rear of his home. In his rear yard, power lines from houses all around his, converge at a pole. The pole sits in his rear yard. The petitioner described it as looking like a large spider web. None of the houses in his area have this problem. He also provided pictures to corroborate his testimony. (Pet. Exs. 1-15). The existence of the power lines prevent him from building the addition in the rear of his house.

DECISION

The threshold issue in this matter is whether the Petitioners have met the test for entitlement to a variance as established in *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995).

In order to grant a variance, Baltimore County Zoning Regulations (BCZR) § 307.1 states, as relevant:

> "...The County Board of Appeals...shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship...Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare..."

In order to obtain a variance in this instance, Petitioner first must prove the uniqueness of the property and then that such uniqueness results in practical difficulty. (*See Cromwell v. Ward*, *supra* 102 Md. App. at 703-722; 651 A.2d at 430-440.) The uniqueness element requires that the subject property have an inherent characteristic not shared by other properties in the area, such as, shape, topography, sub-surface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. (*Id.*, 102 Md. App. at 710-11; 651 A.2d at 433-34, citing *North v. St. Mary's County*, 99 Md. App. 502, 514-15; 638 A. 2d 1175 (1994).)

The second step of the variance test examines whether the disproportionate effect of the ordinance, caused by the uniqueness of the property, creates practical difficulty for or unnecessary hardship on the owner of the property. (*Cromwell*, 102 Md. App. at 694-95.) With respect to practical difficulty, there is a three-part review: (1) whether compliance with the strict letter of the restrictions governing area, setbacks, etc., would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome; (2) whether a grant of the variance would do substantial justice for

the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; and (3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. (*Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel*, 407 Md. 53, 83-84; 962 A.2d 404, 422 (2008), citing *McLean v. Soley*, 270 Md. 208, 214-15; 310 A.2d 783, 787 (1973).) The hardship at issue cannot be self-created. (*Cromwell*, 102 Md. App. at 721-22; 651 A.2d at 439-40.)

The first determination is that of uniqueness of the property. Based on the evidence presented and the testimony of the Petitioner, the Board is convinced that the property is unique. The power lines in the rear yard are unique to 6716 Chippewa Drive. There are a lot of them converging at the pole in the yard. None of the other properties in his area share this problem.

With respect to the second determination, that of practical hardship or unnecessary hardship, the Board is also convinced that this requirement is satisfied. Compliance with the strict letter of the restriction, the ten (10) foot setback would render conformity with the restriction unnecessarily burdensome because the required setback would not allow Petitioner to build an addition on the side of their home. A strict adherence to the required setback would only allow Petitioner to build a four foot eight-inch-wide addition. Because of the power lines in the rear yard, they cannot build on the back of their home. Secondly, a lesser relaxation than that applied for would not give substantial justice to Petitioner because, as stated above, the addition would be entirely too narrow. Petitioners are still requesting to adhere to a four (4) foot setback. Lastly, the Board finds that the relief requested is in keeping with the spirit of the ordinance and public safety and welfare is secured. There is no evidence that the granting of the variance would

adversely impact public safety and welfare whatsoever. In that the Petitioner had persuaded this Board that both prongs of the *Cromwell* analysis have been me, the requested variance relief is **GRANTED**.

ORDER

THEREFORE, IT IS THIS 11th day of July, 2023, by the Board of Appeals of Baltimore County, it is:

ORDERED that the Petition for Variance to approve an addition on the right side of a dwelling with a side setback of four (4) feet in lieu of the minimum required side setback of ten (10) feet, be and is hereby **GRANTED**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through 7-210 of the *Maryland Rules*.

BOARD OF APPEALS OF
BALTIMORE COUNTY

Joseph L. Evans, Panel Chair

Bryan T. Pennington

Adam T. Sampson was a Member of the Board of Appeals and participated in the hearing and public deliberation in this matter. Mr. Sampson was not reappointed and his term expired on April 30, 2023.

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

July 11, 2023

Mark and Hadassah Kohen
6716 Chippewa Drive
Baltimore, Maryland 21209

RE: In the Matter of: *Mark and Hadassah Kohen*
Case No.: 22-176-A

Dear Mr. and Mrs. Kohen:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington Hay

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure

c: Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge
Stephen Lafferty, Director/Department of Planning
C. Pete Gutwald, Director/PAI
James R. Benjamin, Jr., County Attorney/Office of Law