

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E side of Link Avenue; 150 feet S of		
Sufer Spring Road	*	DEPUTY ZONING
13 th Election District		
1 st Councilmanic District	*	COMMISSIONER
(5505 Link Avenue)		
	*	FOR BALTIMORE COUNTY
Dwayne Dixon		
<i>Legal Owner</i>	*	
Bradley Kincade		
<i>Lessee</i>	*	CASE NO. 2010-0207-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Dwayne Dixon, and the lessee, Bradley Kincade. Petitioner is requesting Variance relief from Sections 1B01.3.C.1 and 301.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an open projection (proposed deck) with a side yard setback of 0 feet in lieu of the minimum required 7.5 feet. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Petitioner Bradley Kincade. The legal property owner, Dwayne Dixon, did not appear, but Mr. Dixon provided written authorization for Petitioner’s proposed improvements and requested relief. These authorizations were marked and accepted into evidence as Petitioner’s Exhibits 6A and 6B. Also appearing as interested citizens opposed to the relief were Carol Enge and Jim Hyatt of 5507 Link Avenue. There were no other individuals in attendance.

Testimony and evidence offered revealed that the subject property is rectangular in shape and consists of approximately 5,940 square feet or 0.14 acre, more or less, zoned D.R.5.5. As

shown on the site plan, as well as the zoning map and aerial photographs that were marked and accepted into evidence as Petitioner's Exhibits 2 and 3, the property is located on the east side of Link Avenue, just south of Sulphur Spring Road and west of Southwestern Boulevard (U.S. 1), in the Halethorpe area of Baltimore County. The property is improved with an existing two-story wood frame and vinyl sided single-family dwelling situated in the "North Halethorpe" subdivision. The property owner, Dwayne Dixon, has owned the subject property since 1992, but currently resides in California. Petitioner Mr. Kincade has resided there for almost two years. During that time, Petitioner has made a number of improvements to the interior of the property and has generally cleaned up the exterior as well. According to Petitioner, in an effort to enhance the exterior space, he began construction of an open deck attached to the side of the home on the southern side of the property. Photographs of the proposed deck site were marked and accepted into evidence as Petitioner's Exhibits 4A through 4C. Petitioner also submitted a sketch of the deck that was marked and accepted into evidence as Petitioner's Exhibit 5. The deck is presently attached to the home and elevated by support posts and a large joist. Some of the deck planks have been attached, but the deck is as yet uncompleted, pending the outcome of this hearing.

The workmanship appears to be first rate; however, the problem is the fact that the deck will encroach into the side yard completely and extend to the property line, thus resulting in the variance request for a 0 foot setback for the open projection in lieu of the minimum required 7.5 feet. The next door neighbor, Carol Enge, of 5507 Link Avenue expressed opposition to the requested variance. Ms. Enge submitted several photographs that were marked and accepted into evidence as Protestant's Exhibits 1A through 1D, which show the actual construction of Petitioner's deck and also show it extending to the property line. She indicated that she means

no ill will toward Petitioner and his attempt to improve the property, but feels very strongly that Petitioner's deck in its present location is not appropriate. She believes the setback requirements should be enforced and that there is no compelling reason for the deck to be built in a manner that extends to her property line. In support of this position, Ms. Enge also submitted a letter/petition dated March 17, 2010 that was marked and accepted into evidence as Protestant's Exhibit 3. This letter/petition was signed by 10 nearby neighbors on Link Avenue and expresses opposition to the requested variance. Another letter submitted by Ms. Enge was written and signed by William and Pamela Wheeler of 5511 Link Avenue (who also signed the aforementioned letter/petition). This letter was marked and accepted into evidence as Protestant's Exhibit 4 and expresses opposition to the location of the deck in the side yard so close to the property line.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated March 24, 2010 which states that the floor of the proposed deck has been constructed. Nonetheless, the Planning Office does not support Petitioner's request, as the deck will adversely impact the adjacent property at 5507 Link Avenue. Structures of this type should not carry a zero (0) foot or minimal setbacks unless there is an established maintenance easement on the property.

In considering a request for variance, I must do so in accordance with the mandate of the Maryland Court of Special Appeals in the case of *Cromwell v. Ward*, 102 Md.App. 691 (1995) and their interpretation of Section 307 of the B.C.Z.R. In that case, the Court interpreted the regulation to require that a two-prong test be met in order for variance relief to be granted. First, it must be shown that the property is unique in some manner and that this uniqueness drives the need for variance relief. Second, upon the determination that the property is unique, it must then

be considered whether strict compliance with the regulation would cause a practical difficulty upon the property owner and be unnecessarily burdensome.

In my judgment, based on the evidence presented by Petitioner, there is not sufficient evidence of unusual conditions or characteristics related to this lot, and which compels the need for the variance. Upon due consideration of the evidence presented in the instant case, I am not persuaded that Petitioner has met this burden. Indeed, *Cromwell* requires that there must be a unique characteristic of the property at issue (i.e., topography, shape, configuration, etc.), in order for relief to be granted. The characteristics of the subject site are not anomalous or unusual when compared to other lots in the neighborhood. Hence, there is not sufficient evidence to suggest that this property meets the uniqueness requirement. Having determined that no uniqueness exists as to Petitioner's property, I must therefore deny the variance requested by Petitioner.

Finally, I must also determine whether the request is within the spirit and intent of the Zoning Regulations and its impact, if any, on adjacent properties. I was very impressed with Petitioner and his desire to improve the property by providing a deck extension to the south side of the property. In addition, the deck appeared to have been well built until construction was halted due to the setback issues; however, in deciding this case, I must be guided by the relevant facts presented and the applicable legal principles. I must agree in this instance with the Office of Planning's comment that the subject property with its close proximity to the adjacent property owned by Ms. Enge, does not lend itself to the construction of a deck on the side of the property as proposed on the site plan. I believe the deck as planned would have a negative impact on the adjacent property, and would not be in keeping with the look of other properties in this

