

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S side of Dunglew Road, 25 feet W of		
the c/l of Dunran Road	*	DEPUTY ZONING
12 th Election District		
7 th Councilmanic District	*	COMMISSIONER
(3030 Dunglew Road«STNUMBERSUFF»«STPREDIR»«STPRETYPE»)	*	FOR BALTIMORE COUNTY
William and Patra Yacumis		
<i>Petitioners</i>	*	CASE NO. 2010-0286-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 owners of the subject property, William and Patra Yacumis. Petitioners are requesting Variance relief from Section 301.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an existing open projection (deck) to have a side yard setback as close as 18 inches in lieu of the allowed 18 ¾ feet. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Petitioner William Yacumis. There were no Protestants or other interested citizens in attendance.

Testimony and evidence offered revealed that the subject property is irregular in shape -- much like a trapezoid -- and consists of approximately 10,725 square feet or 0.246 acre, more or less, zoned D.R.5.5. The property is located at the southwest corner of Dunglew Road and Dunran Road, just east of Dundalk Avenue, in the Dundalk area of Baltimore County. There is also an alleyway that runs along the rear of the property. As depicted on the site plan, the property is currently improved with a two-story single-family dwelling that, according to property tax records, was built in 1940 and contains approximately 1,664 square feet. There is a

detached garage to the rear with an asphalt driveway abutting the alleyway. The property is also improved with an existing wood deck off the rear and side of the dwelling. According to Petitioner, this deck was rather aged when he bought the property two and a half years ago, and he believes the deck had been attached to the home for many years. In order to improve the existing deck, as well as to expand the area of the deck, Petitioner decided to utilize the existing framing from the old deck, while removing the floor planks, and extend the deck toward Dunran Road, with new posts and all new floor planks. Petitioner also constructed a privacy fence around the deck. Photographs of the deck from several different angles were marked and accepted into evidence as Petitioner's Exhibits 3A through 3H. These photographs also show the surrounding neighborhood and the layout of the nearby homes. As also shown on the record plat that was marked and accepted into evidence as Petitioners' Exhibit 5, the neighborhood is an older subdivision known as "Dundalk Highlands" and is a traditional layout with fairly narrow streets with curb and gutter, along with a 5-6 foot grassy area adjacent to sidewalks.

Petitioner indicated that he completed the deck, but this was before he became aware of the setback requirements for an open projection, such as a deck. Although not yet cited by Code Enforcement, Petitioner was informed he needed to file for the aforementioned variance in order to permit the deck to have a setback as close as 18 inches in lieu of the required 18 ¾ feet.

In support of the variance request, Petitioner indicated that the shape and location of his property significantly impacts any improvements he wishes to make. The long, trapezoidal shape, as shown on the zoning map that was marked and accepted into evidence as Petitioner's Exhibit 2, limits any potential to build toward the side of the property. In addition, the fronting of the property on two busy neighborhood streets means that the rear yard is always going to face toward a public road, thereby limiting Petitioner's privacy, while also creating more impact to

the neighboring properties from any improvements Petitioner wishes to make to the rear or side areas of his property. Petitioner believed, and still believes, that the most logical area for extending the deck is its present location at the side of the property. Petitioner also believes it is relevant to note that there are a number of other properties in the neighborhood that have similar open projection decks with similar encroachments into the required setback. As proof, he submitted three photographs that were marked and accepted into evidence as Petitioner's Exhibits 4A, 4B, and 4C, which do show open decks encroaching close to the front and side sidewalk areas.

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 May 4, 2010 which indicates that a site visit was conducted. Their view is that the hardship and practical difficulty appear to be self-imposed. There is much room in the rear yard for an extension to the original deck without building it to the side street property edge. The Planning Office is concerned about Petitioners' variance request and that construction occurred without previous property line setback relief. The new extension (almost completed) protrudes visually obtrusively into this well designed and well maintained neighborhood of large older homes. An attached 4 foot high solid wood fence rising from the already raised deck detracts from the appearance of the surrounding community. The Planning Office recommends that the variance be denied and that the deck be rebuilt off the rear of the existing deck into the larger empty rear yard and away from the side street. Furthermore, the Dunran Road side of the repositioned deck shall be landscaped with evergreen plantings (i.e. Leyland Cypress, etc.) to further soften the visual effect of the privacy fence on the deck extension.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The irregular shape of the property, as well as the fronting of the property on two public streets, causes constraints to the property and contributes to the need for variance relief. I also find Petitioners would suffer practical difficulty and undue hardship if the variance request was to be denied entirely.

I am, however, concerned about the impact of the deck extending so close to the property line and sidewalk on the Dunran Road side of the property, as well as the impact of the privacy fence. Therefore, in order to assure that the relief can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare, I will condition the granting of the relief that Petitioner shorten the deck and remove the privacy fence in favor of a more traditional railing. The relief granted shall be modified and the specific conditions expounded on further in this Order.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners' variance request should be granted with modifications and conditions.

THEREFORE, IT IS ORDERED this 29th day of June, 2010 by this Deputy Zoning Commissioner, that Petitioners' Variance request Section 301.1.A of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an existing open projection (deck) to have a side yard setback as close as 7 feet in lieu of the allowed 18 $\frac{3}{4}$ feet be and is hereby **GRANTED**, subject to the following which are conditions precedent to the granting of the relief:

1. Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If,

2. Within sixty (60) days from the expiration of the appeal period, Petitioners shall shorten the deck by approximately 7 feet on the side facing Dunran Road. Specifically, Petitioners shall remove the outward support posts and the outward third of the deck extending furthest from the home that is supported by those posts. This area to be removed is depicted as a redlined area on the site plan (Petitioners' Exhibit 1) and on the black crosshatched areas shown on the photographs of the deck that were accepted into evidence as Petitioners' Exhibits 3A through 3G. A copy of the exhibits is attached and incorporated herein.
3. Within sixty (60) days from the expiration of the appeal period, Petitioners shall also remove the existing privacy fence in its entirety and replace it with a traditional deck railing according to Code, similar to the railing depicted in the photographs of a neighbor's deck that were accepted into evidence as Petitioners' Exhibits 4A and 4B. A copy of the exhibits is attached and incorporated herein.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz