

**IN RE: PETITION FOR VARIANCE**

S side of Lansdale Road, 199.72 feet E  
of 54th Street  
15<sup>th</sup> Election District  
7<sup>th</sup> Councilmanic District  
(8021 Lansdale Road)

**Wendy and Michael Piniiecki**  
*Petitioners*

\* BEFORE THE  
\* DEPUTY ZONING  
\* COMMISSIONER  
\* FOR BALTIMORE COUNTY  
\* **CASE NO. 2010-0178-A**

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**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, Wendy and Michael Piniiecki. Petitioners are requesting Variance relief from Section IV “D” Residence Zone C.2 as amended (1953-1955) to permit a front one-story frame addition with a front property line setback and a street centerline setback of 10 feet and 40 feet respectively in lieu of the required 25 feet and 55 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 were Petitioners Wendy and Michael Piniiecki. There were no Protestants or other interested persons in attendance.

Testimony and evidence presented at the hearing revealed that the subject property is rectangular-shaped and consists of approximately 2,070 square feet, or 0.0475 acre, more or less, zoned D.R.10.5. The property is located on the south side of Lansdale Road, north of Eastern Avenue and the Eastpoint Mall and west of Interstate 695, near the Baltimore City/Baltimore County line. The property is part of a row house community known as “Eastwood Heights” and is improved with a single-family row home built in 1956.

Petitioners originally built a covered deck attached to the front of the home that replaced a small landing with steps in early 2006. A copy of the March 10, 2006 permit indicated the deck was to be 16 feet by 15 feet for a total of 240 square feet. However, much of Petitioners' front yard had to be dug up in order to repair a water pipe. As a result, most of the deck had to come down as well. More recently, Petitioners obtained another permit to re-construct the deck, this time as a covered wood deck on the front of the home, with the same 16 foot by 15 foot dimensions.

During the course of construction, Petitioners had a great deal of lumber and other debris strewn about the property. This prompted a Code Enforcement Inspector to visit the property and issue a Correction Notice dated November 5, 2009, which directed Petitioners to removed excess trash and debris and other materials from the property. Inspector Ray Harmon also observed the deck structure on the front of the home, which appeared to be an enclosed structure. He issued a second Correction Notice on November 10, 2009 for violation of the required front setbacks for an addition on the front of the house that does not agree with issued building permit no. B726301.<sup>1</sup> Thereafter, Petitioners filed for the instant variance relief for the deck structure attached to the front porch.

Photographs that were marked and accepted into evidence as Petitioners' Exhibits 3A through 3D show the partially built structure with wooden board sheathing surrounding the front and sides of the structure. Petitioners indicated they initially wanted the wood sheathing for privacy, but now realize it is impractical, especially in front since it blocks their views as well. They indicated that they are not building an addition, per se, but only wished for the extended part of the deck to have some screening. They did not realize that essentially having the deck "enclosed" under the permanent roof structure created setback issues.

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<sup>1</sup> CO-0072072

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 February 2, 2010 which states that the partially built front addition is much too massive and incompatible with the existing conditions in the immediate vicinity. The incompatibility of the addition is further exacerbated by the fact that it is five feet above the residences across the street. Nonetheless, the solid walls and foundation shall be removed and no enclosed addition of this type shall be permitted on the front of the dwelling on the subject property. The Petitioners may, however, retain the open deck with a with a safety type railing. The open deck shall be subject to setbacks and any required variances.

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. 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.

The Petitioners' property is similar in size to that of neighboring properties and the existing dwelling is also similarly situated on the property as that of the neighboring dwellings. Indeed, the subject area is a row home community and the lot sizes and dwelling sizes are all very similar and unremarkable. Although I am certainly understanding and empathetic with

Petitioners in their desire to construct a covered, enclosed deck as shown in the photographs, in my view, the configuration of the subject property, the orientation of the dwelling, and the lot size do not lend themselves to such a unique and prominent structure, as proposed on the site plan.

Upon due consideration of the evidence presented in the instant case, I am not persuaded that Petitioners have met their burden under Section 307 of the B.C.Z.R. 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 unique when compared to other lots in the neighborhood. I believe the proposed structure and its attachment to the front of the home will overcrowd the land and will have an adverse impact on the overall appearance and character of the neighborhood, especially vis-à-vis other properties nearby. I agree with the comments from the Office of Planning that the partially built front addition is much too massive and incompatible with the existing conditions in the immediate vicinity. Hence, in my judgment, the request is not within the spirit and intent of the Zoning Regulations. Further, I cannot find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Thus, I am persuaded in this case to deny the variance.

However, similar to the Office of Planning's recommendation, I will permit the basic structure to remain and for Petitioners to retain the open projection deck with an open railing, rather than the wooden planks that encircle the deck as depicted in the photographs (Petitioners' Exhibits 3A through 3D). This includes the granting of variance relief for the open projection deck, if necessary, from the front property line and street centerline setbacks. The dark colored wood planks that appear on the ground level of the deck may remain, but the main, front door

level of the deck shall have the wood plank sheathing removed and replaced with a railing and spindles similar to the railing and spindles along the front concrete steps, as shown in the aforementioned photographs.

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 denied in part and granted in part.

THEREFORE, IT IS ORDERED this 25<sup>th</sup> day of March, 2010 by this Deputy Zoning Commissioner, that Petitioners' Variance request from Section IV "D" Residence Zone C.2 as amended (1953-1955) to permit a front one-story frame addition with a front property line setback and a street centerline setback of 10 feet and 40 feet respectively in lieu of the required 25 feet and 55 feet be is hereby **DENIED**; and

IT IS FURTHER ORDERED that Petitioners may retain the existing open projection deck with an open railing, and a variance from the front property line setback and street centerline setback for the existing open project deck, to the extent required by the Zoning Regulations, be and is hereby **GRANTED**, subject to the following conditions.

1. Petitioners are advised that they may apply for any required building permits 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, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners shall remove the solid wooden plank sheathing on the main, front door level that presently encircles the deck as depicted in the photographs that were accepted into evidence as Petitioners' Exhibits 3A through 3D. The dark colored wood planks that appear on the ground level of the deck may remain, but the main, front door level of the deck shall have the wood plank sheathing removed and replaced with a railing and spindles similar to the railing and spindles along the front concrete steps, as shown in the photographs.

3. No enclosed addition shall be permitted on the front of the dwelling on the subject property.

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