

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
N side of Pennsylvania Avenue, 100 feet		
E of Fairmount Avenue	*	OFFICE OF ADMINISTRATIVE
9 <sup>th</sup> Election District		
5 <sup>th</sup> Councilmanic District	*	HEARINGS FOR
<b>(405, 407, 409 East Pennsylvania Avenue)</b>	*	BALTIMORE COUNTY
Estate of Leroy Y. Haile, Jr. and		
Leroy Y. Haile, III	*	<b>CASE NO. 2011-0178-A</b>
<i>Petitioner</i>		

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed on behalf of the Estate of Leroy Y. Haile, Jr. ( Leroy Y. Haile, III, personal representative) the legal owner of the subject property. Petitioner is requesting Variance relief as follows:

- 405 East Pennsylvania Avenue: From Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow an existing dwelling to have a side yard setback of 9 feet in lieu of the required 10 feet; and
- 407 East Pennsylvania Avenue: From Section 1B02.3.C.1 of the B.C.Z.R. to allow an existing dwelling to have a side yard setback of 4 feet in lieu of the required 10 feet; and
- 409 East Pennsylvania Avenue: From Section 1B02.3.C.1 of the B.C.Z.R. to allow an existing dwelling to have a side yard setback of 3 feet and 4 feet in lieu of the required 10 feet.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Leroy Y. Haile, III, personal representative, on behalf of the Estate of Leroy Y. Haile, Jr., property owner,

and Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan and is also assisting the Petitioner in the permitting process. There were no Protestants or other interested citizens in attendance.

Testimony and evidence offered revealed that the properties are rectangular in shape and contain three existing two story frame dwellings. Proposed Lot 1 known as 405 East Pennsylvania Avenue contains 7,681 square feet; proposed Lot 2 known as 407 East Pennsylvania Avenue contains 6,347 square feet; and proposed Lot 3 known as 409 East Pennsylvania Avenue contains 4,706 square feet.

Further evidence revealed that the properties were built in the late 1920s – early 1930s, prior to the imposition of the modern formal zoning requirements and were already in existence when purchased by the late Mr. Haile. It was further noted by Mr. Doak that these properties are presently the subject of a minor subdivision process, which has already been reviewed by the various agencies and, subject to the instant variance request, is moving to a conclusion. The subdivision process must of course be successfully completed by the Petitioner to accomplish his objectives regarding the property. Additional testimony was offered to the effect that these structures have existed and have been utilized by residents for some 80+ years. Further, Mr. Doak observed that without the granting of the needed variances, the uninterrupted use of these properties as residences, which is permitted and encouraged under the present day zoning requirements, would be rendered impossible.

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 December 6, 2010 which indicates that the Office supports the requested variance and request to legitimize existing houses on reconfigured lots.

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 subject sites are in a unique situation, in that they have existed for many years as residences prior to the imposition of formal zoning requirements in the area, let alone the present day zoning standards. Moreover, I find that strict enforcement of the B.C.Z.R. would cause the Petitioners to suffer practical difficulty and undue hardship, as they would literally be forced to “uncreate” that which existed long before the present regulations. Such an irrational result would fly against common sense and the intent of our Zoning Code. Therefore, I also find that the variances requested can be granted in strict harmony with the spirit and intent of the said regulations, and in such a manner as grant relief without injury to the public health, safety, and general welfare.

Thus, the variances requested meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioners’ variance requests herein should be granted.

THEREFORE, IT IS ORDERED this 25<sup>th</sup> day of January, 2011 by this Administrative Law Judge that Petitioners’ Variance requests as follows:

- 405 East Pennsylvania Avenue: From Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow an existing dwelling to have a side yard setback of 9 feet in lieu of the required 10 feet; and
- 407 East Pennsylvania Avenue: From Section 1B02.3.C.1 of the B.C.Z.R. to allow an existing dwelling to have a side yard setback of 4 feet in lieu of the required 10 feet; and

- 409 East Pennsylvania Avenue: From Section 1B02.3.C.1 of the B.C.Z.R. to allow an existing dwelling to have a side yard setback of 3 feet and 4 feet in lieu of the required 10 feet

be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

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, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

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

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SIGNED  
LAWRENCE M. STAHL  
Administrative Law Judge  
for Baltimore County

LMS:pz