

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/S Patapsco Avenue, 75' W of c/line of		
West Dundalk Avenue	*	ZONING COMMISSIONER
(106 Patapsco Avenue)		
12 th Election District	*	OF
7 th Council District		
	*	BALTIMORE COUNTY
Frank A. Cosentino, et ux		
Petitioners	*	Case No. 2011-0127-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Frank A. Cosentino, and his wife, Donna M. Cosentino. The Petitioners seek relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed open projection (deck) to an existing detached accessory structure (garage) to have a rear yard setback of zero (0) feet in lieu of the required 50 feet. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request was Frank Cosentino, property owner. Emma Conrad and Geraldine Matthews, the adjacent neighboring tenants residing on the east and west sides, submitted letters of support. There were no Protestants or interested persons present. The matter came before me as the result of a complaint registered by an unidentified Patapsco resident who questioned the Code Enforcement Division of the Department of Permits and Development Management (DPDM) how construction at the rear of the Petitioners home could take place without a building permit. Gary Hucik, a Code Enforcement Officer, investigated and on August 16, 2010 cited the Petitioners with a Correction Notice (No. 82667) and advised them to file the instant Petition to resolve the matter.

Testimony and evidence offered disclosed that the subject property is a narrow rectangular shaped parcel (16.75' wide x 90' deep) located on the north side of Patapsco Avenue

just west of Willow Spring Road and east of the Baltimore City/Baltimore County line. The property contains a gross area of 1,530 square feet, more or less, zoned D.R.10.5, and is improved with a middle-of-group, two-story, townhouse dwelling built in 1919 and a rear yard detached garage. The Petitioners have owned and resided on the property for 16 years. Apparently, the prior owner had dug out the rear yard open space area between the house and the detached garage, constructed a bomb shelter, and poured reinforced concrete over the top. The Petitioners desire to connect the two (2) structures (home and garage) with a 16' long x 13'-7" wide. *See* photographs submitted as Petitioners' Exhibit 2. These improvements were initiated without benefit of a building permit. Unbeknownst to Mr. Cosentino, attaching the structures to create a level even surface created a "technical" setback problem in that the garage is now considered attached to the dwelling, and must be setback a distance of 40 feet from the rear property line which abuts an alley.¹ As shown on the site plan, the garage is located on the rear property line. The decking will be 6 feet above the current rear yard elevation and will be bounded by an existing fence that will be 4 feet higher than the finished deck on the west side (108 Patapsco Avenue). While the deck will be approximately 5 feet higher than the existing rear yard elevation on the east side (104 Patapsco Avenue), the yards are separated by a 3'-5" foot wide walkway that runs from the Petitioners basement along the side of the rear yard past the garage to the alleyway. This walkway will be retained. Additionally, the neighbor's property next to the walkway is separated by an existing wall that runs between the properties. Mr. Cosentino stated that there will exist adequate space under the decking to allow him to keep the area free of debris and he will employ best efforts to mitigate problems caused by rodent infestation which has in the past been a problem in the neighborhood.

¹ Although current D.R.10.5 area regulations in Section 1B02.3C.1 (Chart) have been revised several times and now require a minimum lot area of 3,000 square feet, a lot width of 20 feet and side/front yard setbacks of 10 feet and a minimum rear yard depth of 50 feet, the 1954 "D Residential" regulations are applicable here. B.C.Z.R. Section 103 provides the regulations in this case are those in effect at the time the St. Helena subdivision was originally approved and recorded in the Baltimore County Plat Book No. 5, Folio 38.

In support of the request, Mr. Cosentino testified that all work will be of high quality and the improvements are sorely needed for the family's enjoyment and well-being. Photographs of the property support this contention as well as the comments received from the Office of Planning, which states in pertinent part, "The proposal to connect the two structures is reasonable for the property itself in that it will permit access from the first story of the house to the second story of the garage and provide an area between that is level and even." Finally, as indicated above, the Petitioners submitted into evidence as Exhibit 3 written statements from their neighbors, Emma Conrad and Geraldine Matthews, whose homes are adjacent to the subject property and state that they have no objections to the new deck addition.

After due consideration of the evidence and testimony presented, I am persuaded that the Petitioners have met the spirit and intent of Section 307.1 of the B.C.Z.R. for relief to be granted. There were no adverse comments submitted by any County reviewing agency and the owners/tenants on the affected sides are in support and their concerns have been addressed. The Office of Planning, in its Zoning Advisory Committee (ZAC) comment, further points out that the subject property has been improved to its maximum and that no further expansion of the current footprint should be allowed. Finally, it is clear that strict compliance with the B.C.Z.R. would result in a practical difficulty and/or unreasonable hardship upon the Petitioners and require the demolition of existing improvements. For all of these reasons, I am persuaded to grant the variance.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of November 2010 that the Petition for Variance seeking relief from Sections 1B02.3.B and 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed open projection (deck) to an existing detached accessory structure (garage) to have a rear yard setback of zero (0) feet in lieu of the required 50 feet, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1. The 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 its own risk until the 30-day appeal period from the date of this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.
2. The improvements shall comply with the International Building Code (IBC) 2003 as adopted by Baltimore County and as interpreted by its buildings engineer.
3. There shall be no additional structural improvements permitted at this site that would result in a building footprint expansion, including the deck which shall remain open on the exposed sides and shall not be enclosed at any time.
4. The Petitioners shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management (DPDM) reasonable access to the subject additions on the property to ensure compliance with this Order.
5. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision shall be entered within thirty (30) days of the date hereof.

WJW:dlw

____SIGNED____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County