

**IN RE: PETITION FOR VARIANCE**  
SW/corner of Sollers Point Road  
and Jackson Road  
12<sup>th</sup> Election District  
7<sup>th</sup> Council District  
**(7015 Sollers Point Road)**  
  
David E. Warner and  
Gwendolyn Warner (*Deceased*)  
Petitioners

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BEFORE THE  
OFFICE OF ADMINISTRATIVE  
HEARINGS FOR  
BALTIMORE COUNTY  
**CASE NO. 2012-0225-A**

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by David E. Warner and Gwendolyn Warner (*Deceased*). The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- Section 1B02.3.C.1, to permit an existing dwelling with a front yard setback of 15', a side yard setback of 17', and a rear yard setback of 7' in lieu of the required 25', 25', and 30', respectively;
- Section 301, to permit an existing front porch with a front yard setback of 10', an existing deck in the side yard with a setback of 11', and an existing rear deck with a rear setback of 4' in lieu of the required 18.75', 18.75', and 22.5', respectively;
- Section 304.1, to approve an undersized lot with a total area of 5,406 square feet in lieu of the required 6,000 square feet, and
- Section 400.1, to permit an existing garage (accessory structure) to be located in the side yard with a rear setback of 2' in lieu of the required rear yard and 2.5' setback, respectively.

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

Appearing at the public hearing in support of the variance request was Petitioner David E. Warner. There were no Protestants or other interested parties in attendance. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R., and the file does not contain any letters of opposition or protest.

Testimony and evidence revealed that the subject property is 5,406 square feet (0.124 acres) and zoned DR 5.5. Petitioner and his wife (now deceased) bought the property in 1983. All of the conditions (for which variance relief is sought) existed when Petitioner purchased the home in 1983, and apparently no mention was made at that time that variance relief was needed or that the property did not comply with the B.C.Z.R. In fact, Petitioner found and brought to the hearing a Baltimore County permit approving construction of the addition to the rear of the home (See Exhibit 2), which was issued in 1973. Thus, these site conditions have existed for nearly 40 years, and Petitioner also indicated his neighbor's home was situated in a similar fashion, including a garage on the side (as opposed to rear) of the home. Petitioner has listed his home for sale, and the title company insisted he obtain the needed variances so that a title policy could issue.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. There were no adverse comments received from any of the County reviewing agencies.

Based upon the testimony and evidence presented, I am persuaded to grant the request for 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. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md 53, 80 (2008).

Petitioner has met this test, and as noted above, the conditions have existed for nearly 40 years, and Petitioner is not constructing any improvements or changing the site in any fashion at this time.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship. As noted, Petitioner would be unable to sell the home without variance relief.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is amply demonstrated by the lack of community opposition, as well as the absence of comments by County reviewing agencies.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and after considering the testimony and evidence offered by the Petitioner, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED, this 27 day of April, 2012, by this Administrative Law Judge that Petitioner's Variance request from the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- Section 1B02.3.C.1, to permit an existing dwelling with a front yard setback of 15', a side yard setback of 17', and a rear yard setback of 7' in lieu of the required 25', 25', and 30', respectively;

- Section 301, to permit an existing front porch with a front yard setback of 10', an existing deck in the side yard with a setback of 11', and an existing rear deck with a rear setback of 4' in lieu of the required 18.75', 18.75', and 22.5', respectively;
- Section 304.1, to approve an undersized lot with a total area of 5,406 square feet in lieu of the required 6,000 square feet, and
- Section 400.1, to permit an existing garage (accessory structure) to be located in the side yard with a rear setback of 2' in lieu of the required rear yard and 2.5' setback, respectively,

be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioner will 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.

JEB:pz

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County