

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
SW side of Green Fern Way, 426' W		
of the center of Alma Road	*	OFFICE OF ADMINISTRATIVE
13 th Election District		
1 st Council District	*	HEARINGS FOR
(256 Green Fern Way)		
	*	BALTIMORE COUNTY
Donald R. Schlereth and Rhonda K. Burkett		
<i>Petitioners</i>	*	CASE NO. 2012-0127-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Donald R. Schlereth and Rhonda K. Burkett, legal owners of the above property. The Petitioners are requesting Variance relief under Sections 1B02.3, 504, and 301 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) and Section V.B.6.b of the Comprehensive Manual of Development Policies (CMDP) to permit an open projection (deck) with a rear setback of zero (0) feet in lieu of the required 11.25 feet, and to amend the latest Final Development Plan of Woodshire Village, Section One, for Lot No. 59 only. 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 public hearing in support of the variance request was Petitioner Donald R. Schlereth. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of opposition or protest.

It should be noted that this matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits, Approvals and Inspections¹. A Code Enforcement Correction Notice was issued to the Petitioners on August 19, 2011, for failure to obtain a building permit prior to construction of decks on rear of dwelling. Hence, Petitioners filed the instant variance request.

Testimony and evidence revealed that the subject property is zoned DR 5.5, and is located within the Woodshire Village subdivision. Petitioner testified he purchased the home approximately ten (10) years ago, and started construction on the decks sometime in April, 2011. An anonymous complaint was registered with the County, and Petitioner stopped any further construction activities.

As shown on Petitioners' Exhibit 1, Petitioner intended to construct an "upper deck" and a "lower deck" both of which were 16' x 16'. Thus, the decks would project 32' from the rear of the residence, which (according to an October, 2011 survey by Gary Lane at Survey Associates) is actually 4' beyond the property line. In addition, the B.C.Z.R. requires an 11.25 feet setback at the rear of the property, which caused the Petitioners to seek variance relief.

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

Based upon the testimony and evidence presented, I will 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 Petitioners.

¹ Case No: CO-0099663

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).

The Petitioners have met this test when the subject property is compared to the other lots in this subdivision (Woodshire Village), especially because (as shown on the photos Petitioner presented at the hearing) the rear yard of the property slopes downward several feet from the rear of the home, which essentially renders the rear yard useless for activity or entertainment.

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 any neighborhood opposition or negative comments from County 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 Petitioners, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED, this 30th day of December, 2011 by this Administrative Law Judge that Petitioners' Variance request from Sections 1B02.3, 504, and 301 of the Baltimore County Zoning Regulations ("B.C.Z.R.") and Section V.B.6.b of the Comprehensive Manual of Development Policies (CMDP) to permit an open projection (deck) with a rear setback of zero (0) feet in lieu of the required 11.25 feet, and to amend (in accordance with this Order) the latest Final Development Plan of Woodshire Village, Section One, for Lot No. 59 only, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioners may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioners are hereby made aware that proceeding at this time is at their 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 Petitioners will be required to return and be responsible for returning said property to its original condition.
2. The variance relief is expressly conditioned upon Petitioners' removal of 4 feet from the length of the lower deck (meaning its dimensions will now be 12' x 16'), as noted on Exhibit 1, such that the "upper" and "lower" decks will now project 28' into the rear yard, rather than 32', as presently exists.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw