

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(2 Adil Court)</b>		
1 <sup>st</sup> Council District	*	OFFICE OF ADMINISTRATIVE
1 <sup>st</sup> Election District		
Shah N. and Robina Hamdani	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2012-0286-A</b>

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Shah N. and Robina Hamdani, legal owners of the above property. The Petitioners are requesting Variance relief pursuant to §§ 504.2 and 303.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) and § V.B.6.b of the Comprehensive Manual of Development Policies (“CMDP”), to permit an existing deck with a rear yard setback of 5' in lieu of the required 11.25'. 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 Shah N. Hamdani. Appearing as an interested person was Eric D. Driver. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

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. The Petitioner submitted a petition of support signed by all of the residents of Adil Court with the exception of the immediate neighbor at 4 Adil Court. Exhibit 2.

This matter is currently the subject of a violation case (Case No. CO-0108934). It should be noted that the fact that a code violation is issued is generally not considered in a zoning case. Zoning enforcement is conducted by the Department of Permits, Approvals, and Inspections, which has the authority to issue Correction Notices and Citations and to impose fines and other penalties for violation of law. On the other hand, the role of the Administrative Law Judge in this matter is to decide the discreet legal issue of whether the Petitioner is entitled to the requested zoning relief.

Testimony and evidence revealed that the subject property is 0.116 acres and is zoned DR 3.5. The Petitioners bought the home in 2008, and constructed a wooden deck off the rear of the dwelling. They did so without a permit, and the Petitioners subsequently tore down a large portion of the deck. What remains is a modest wood deck, with dimensions of 8' x 8'. This existing deck is shown in a photo admitted as Petitioners' Exhibit 3.

Though it is not entirely clear from the site plan, it does not appear from the photos that the existing deck requires any variance relief to legitimize its existence. Mr. Driver (who is the cousin of the adjoining owner at 4 Adil Court, Barbara Gamble) examined the photo marked as Petitioners' Exhibit 3 and indicated that he did not object to the size or positioning of the presently existing deck as shown on Exhibit 3. Mr. Driver indicated that his cousin was concerned the deck would be enlarged so as to be immediately adjacent to (i.e., almost touching) the privacy fence which separates her yard from the Petitioners' home, as also shown on Exhibit 3. It is readily apparent that the existing deck is situated at least 10 feet from Ms. Gamble's fence, which would more than satisfy the 10 foot side yard setback in the DR 3.5 zone. B.C.Z.R. § 1B02.3.C.

Though the code enforcement file was not provided to the undersigned (as is usually done), I would imagine the Petitioners were cited by the code official for constructing the deck without a

permit, and perhaps, based on the size of the original deck – much of which was subsequently dismantled by Petitioners – for violating the rear yard setback. Again, as noted above, the deck as presently existing would appear to satisfy the 11.25' rear yard setback. As such, the resolution of this case should also resolve any outstanding code enforcement issues, and a copy of this Order will be provided to the code official for verification of that fact.

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 dismissed, without prejudice, as unnecessary.

THEREFORE, IT IS ORDERED, this 7<sup>th</sup> day of November, 2012 by this Administrative Law Judge that Petitioners' Variance request from §§ 504.2 and 303.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") and § V.B.6.b of the Comprehensive Manual of Development Policies ("CMDP"), to permit an existing deck with a rear yard setback of 5' in lieu of the required 11.25', be and is hereby DISMISSED WITHOUT PREJUDICE.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:dlw