

IN RE: PETITION FOR VARIANCE
(7312 Wenig Avenue)
12th Election District
7th Councilmanic District
Gene M. Hibler
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0067-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the legal owner of the subject property, Gene M. Hibler. The Petitioner is requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a rear yard setback of 10' in lieu of the required 50' and a side yard street setback of 10' in lieu of the required 25' for an addition. 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 held for this case was Gene M. Hibler. 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 protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. There were no adverse ZAC comments submitted from any of the County reviewing agencies, although the Petitioner stated that Ms. Kingeter from the Department of Planning (DOP) visited the site and indicated she supported the relief.

Testimony and evidence revealed that the subject property is 22,220 square feet and is zoned DR 5.5. The Petitioner previously sought variance relief for a garage addition, which was denied in Case No. 2012-0172-A. Since that time, the Petitioner has reduced the size of the garage addition significantly (formerly 38' x 50', now 30' x 40') and has the support of his neighbor (who is his brother), who formerly opposed the relief. *See Exhibit 3.* And perhaps most importantly, the Petitioner indicated that the prior Order stated his garage addition was situated 11' from his neighbor's dwelling, when in fact the distance is 31'. This was a significant factor in the denial of relief in that case (*See Order dated March 22, 2012, p.2*), and I apologize for the mistake. Finally, the garage addition will now be smaller than the original dwelling, which was not the case previously.

Based upon the testimony and evidence presented, I will grant the request for variance relief. 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. As seen on the site plan, the lot is shaped like a trapezoid, and the angled property boundary lines cause "pinch points" that necessitate variance setback relief.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship, since he would be unable to construct the addition as designed. 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 demonstrated by the lack of opposition from the community and the lack of negative comments from Baltimore County reviewing agencies.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 19th day of November, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a rear yard setback of 10' in lieu of the required 50' and a side yard street setback of 10' in lieu of the required 25' for an addition, be and is hereby GRANTED.

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

1. The Petitioner may apply for any required permits 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.

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:dlw