

IN RE: PETITION FOR VARIANCE

(72 Oakway Road)

8th Election District

3rd Councilman District

3407 Starlite, LLC

Legal Owner

Petitioner

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BEFORE THE OFFICE

OF ADMINISTRATIVE

HEARINGS FOR

BALTIMORE COUNTY

CASE NO. 2013-0285-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 Benjamin L. Polakoff, Esquire, on behalf of the legal owner, 3407 Starlite, LLC. The Variance was filed pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) §§ 301.1 and 1B02.3.C.1: (1) to permit an existing principal structure with a setback of 15' in lieu of the required minimum 30' setback; and (2) to permit a proposed deck (open projection) with a setback of 5' in lieu of the minimum 22.5'. 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 requests was Bernadette L. Moskunus with Site Rite Surveying, who prepared the site plan and Thomas J. Kane, III. Benjamin L. Polakoff, Esquire appeared as counsel and represented the Petitioner. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition. 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 substantive Zoning Advisory Committee (ZAC) comments received.

Testimony and evidence revealed that the subject property is approximately 0.17+/- acres

and zoned DR 5.5. The Petitioner purchased the home in April of this year, and has invested over \$45,000 in making improvements to the dwelling. The Petitioner hopes to market the home in the near future, but variance relief is needed before the property can be listed.

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 Ms. Moskunas testified, the subject lot is 74' x 100', while most of the other lots shown on the plat (Exhibit 4) are 50' x 120'. In addition, Ms. Moskunas explained there is an approximate 10' grade change from the rear to the front of the lot. These factors render the property unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, since it would be unable to construct the contemplated improvements. 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 absence of County and/or community opposition. In fact, the adjoining neighbor at 70 Oakway Road submitted a letter of support, which was marked as Exhibit 5.

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 5th day of August, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations ("B.C.Z.R") §§ 301.1 and 1B02.3.C.1: (1) to permit an

existing principal structure with a setback of 15' in lieu of the required minimum 30' setback; and
(2) to permit a proposed deck (open projection) with a setback of 5' in lieu of the minimum 22.5',
be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would 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: sln