

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1726 Earhart Road)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Councilman District		
William Shull & Sherry Bramande	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	CASE NO. 2014-0145-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by William Shull and Sherry Bramande, the legal owners of the subject property. The Petitioners are requesting variance relief from Sections 1B02.3.C.1 and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit an existing addition with a side yard setback of 7 feet¹ and an extension to the principal dwelling with side and rear yard setbacks of 0 feet in lieu of the required 10, 10 and 30 feet, respectively; (2) a front yard setback of 17 feet in lieu of the front yard average of 23 feet; and (3) an open projection (deck) with side and rear yard setbacks of 0 feet in lieu of the allowed 7½, 7½ and 22½ feet. 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 requests was Sherry Bramande and Rick Richardson, whose firm prepared the plan. The file reveals that the Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

¹ At the hearing, Mr. Richardson (a licensed Professional Engineer who was accepted as an expert) pointed out that the side yard setback for the existing addition is in fact 5.7' instead of 7 feet. This in my opinion is not a material discrepancy in these circumstances, and the Petition was amended accordingly.

There were no Zoning Advisory Committee (ZAC) comments received from any of the County agencies.

This matter is currently the subject of a violation case (Case No. C0139407) before the Office of Administrative Hearings, and a copy of the Code Enforcement file was made a part of the zoning hearing file. The Petitioners were cited for undertaking construction activity without proper permits.

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 Petitioners are entitled to the requested zoning relief.

Testimony and evidence revealed that the subject property is approximately 6,000 square feet and is zoned DR 5.5. Ms. Bramande has lived at the location for approximately 3 years, and she wanted to make improvements to her home. The Petitioners provided photos showing that the improvements would be in keeping with the pattern and scale of neighboring homes, and even with the enclosed porch the front of Petitioners' home is roughly in line with adjoining homes. The Petitioners require zoning relief to construct these improvements.

Based upon the testimony and evidence presented, I will grant the petition for variance.

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).

Petitioners have met this test. The Petitioners' lot is narrow and deep, and it is therefore unique.

If the B.C.Z.R. were strictly interpreted, the Petitioners would indeed suffer a practical difficulty, given they would be unable to construct the improvements to their home. 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 County and/or community opposition.

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 24th day of March, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Sections 1B02.3.C.1 and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit an existing addition with a side yard setback of 5.7 feet and an extension to the principal dwelling with side and rear yard setbacks of 0 feet in lieu of the required 10, 10 and 30 feet, respectively; (2) a front yard setback of 17 feet in lieu of the front yard average of 23 feet; and (3) an open projection (deck) with side and rear yard setbacks of 0 feet in lieu of the allowed 7½, 7½ and 22½ feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

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