

IN RE: PETITION FOR VARIANCE
(1117 Engleberth Road)
15th Election District
6th Councilman District
Debra Franklin
Petitioner

*
*
*
*
*

BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2014-0192-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Debra Franklin, the legal owner of the subject property. The Petitioner is requesting variance relief from §§ 1A04.3.B.2.b and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed 1 story open deck addition onto the side of the existing dwelling with a side yard setback of 29 ft. in lieu of the required 37.5 ft. 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 request was Michael Franklin. The Petition was advertised and posted as required by the B.C.Z.R. There were no Protestants in attendance and the file does not contain any letters of opposition.

Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DRP). Neither agency objected to the relief, although the DPR noted Petitioner must comply with the County’s flood protection laws.

Testimony and evidence revealed that the subject property is approximately 17,500 sq. ft. and is zoned RC-5. The waterfront property is improved with an attractive single family

dwelling, and is located in the Holly Neck community. Petitioner wants to construct a deck on the side of the home but needs variance relief to do so.

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).

Petitioner has met this test. The waterfront property has irregular dimensions and is therefore unique.

If the B.C.Z.R. were strictly interpreted, the Petitioner would indeed suffer a practical difficulty, given he would be unable to construct the 1 story open deck addition. 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 community and/or County agency 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 16th day of May, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §1A04.3.B.2.b and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a 1 story open deck addition onto the side of the existing dwelling with a side yard setback of 29 ft. in lieu of the required 37.5 ft., 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 his 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.

JEB:sln

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