

IN RE: PETITION FOR VARIANCE
(1132 Susquehanna Avenue)
15th Election District
6th Councilman District
Paul Crist
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0296-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 Bernadette Moskunas, on behalf of the legal owner, Paul Crist. The Variance was filed pursuant to Baltimore County Zoning Regulations (“B.C.Z.R”) Section 1B02.3.C.1 to permit a side yard setback of 6' with a sum of 12' in lieu of the minimum setback of 10' with a sum of 25', respectively. 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 Paul Crist. Bernadette Moskunas from Site Rite Surveying, also appeared in support of the Petition. An adjoining neighbor (Michelle LaScola) attended the hearing and expressed certain concerns, which will be discussed below. 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 from the Department of Environmental Protection and Sustainability (DEPS) dated July 1, 2013 and the Bureau of Development Plans Review (DPR) dated June 17, 2013. DEPS indicated that the property is located within a Limited Development Area (LDA) and a Buffer Management Area (BMA) and is

subject to Critical Area regulations. The Bureau of DPR indicated the Petitioner must comply with the County's flood plain requirements.

Testimony and evidence revealed that the subject property is approximately 16,818 square feet and zoned DR 3.5. The property is improved with a small single-family dwelling (approximately 850 sq. ft.) which the Petitioner proposes to raze. In its place, the Petitioner would like to construct a modern single-family dwelling as shown on the site plan. Exhibit 1. The house would be situated closer to Susquehanna Avenue than the existing home, but would require zoning relief given the narrow shape of the lot.

Ms. LaScola, who is planning to construct a new home on the lot next door to the Petitioner's (1134 Susquehanna Avenue), indicated she was concerned about whether the property boundary lines shown on the site plan (Exhibit 1) were accurate. As I explained at the hearing, only a circuit court has the authority to hear cases involving disputed property boundaries. Md. Real Prop. Code Ann. § 14-111(c). As such, for purposes of this case, I will assume the Petitioner's site plan, which was signed and sealed by a licensed surveyor, is accurate, and the relief granted herein is based upon that plan.

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. This waterfront parcel is narrow and deep, and is thus unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, since he would be unable to construct a new dwelling on the lot. 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. The variance relief will be subject to certain conditions (enumerated below) designed to minimize any potential impact upon neighboring owners.

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 3rd day of September, 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”) Section 1B02.3.C.1 to permit a side yard setback of 6' with a sum of 12' in lieu of the minimum setback of 10' with a sum of 25', respectively (as depicted on the site plan marked as Exhibit 1), 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.
- The deck shown on the plan shall be open; i.e., it shall not be enclosed or covered with a roof.
- Any HVAC, propane tanks or other mechanical equipment shall not be installed or located in the side yard adjoining 1134 Susquehanna Avenue.

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

JEB:dlw

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

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ORDER ON MOTION FOR RECONSIDERATION

Now pending is Petitioner’s motion for reconsideration, concerning a condition that was imposed upon the relief granted in the Order dated September 3, 2013. The Petitioner was granted relief from the side yard setback requirements in order to construct a replacement dwelling on the property. The Petitioner seeks reconsideration to have removed from that Order a condition requiring the deck shown on the plan to remain unenclosed and uncovered.

The subject property is narrow and deep, and that was why the variance for the side yard setbacks was granted. But at the same time, the lot is small (0.386 Acres) and the setbacks will be just 6 feet on each side of the new dwelling, instead of the 10 feet/25 feet sum required by the Regulations. The existing home being razed had 858 SF of enclosed area, and the home proposed will be over twice that size. Finally, the site plan submitted with the petition shows a “deck” (8 feet deep x 30 feet wide).

In these circumstances, I believe the restriction was a reasonable one, and I will therefore deny the motion. The property is located in the Critical Area, and those regulations seek to limit the amount of impervious surfaces on building lots. The addition of a roof over the deck would cause there to be an additional 240 SF of impervious surface. Although “deck” is not defined in the Regulations, the common meaning and understanding is that such a structure is uncovered.

Indeed, BCZR § 260.2 refers to “unroofed additions, including patios and decks.”

WHEREFORE, for the foregoing reasons, it is this 26th day of September 2013 Ordered the Motion for Reconsideration, be and is hereby, DENIED.

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