

IN RE: PETITION FOR VARIANCE
(1333 Dillon Heights Avenue)
1st Election District
1st Councilman District
Tariq & Donna Khan
Petitioners

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2014-0128-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 Tariq & Donna Khan, the legal owners of the subject property. The Petitioners are requesting variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a carport/addition open on 2 sides with a side yard setback of 4.3 ft. in lieu of the required 10 ft. 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 Tariq Khan and Bernadette Moskunas from Site Rite Surveying, who is assisting the Petitioners with the process. The file reveals that the Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance and the file does not contain any letters of opposition.

The only Zoning Advisory Committee (ZAC) comment received was from the Bureau of Development Plans Review (DPR) dated December 18, 2013. In that comment, Mr. Kennedy noted that a drainage and utility easement was identified on the property yet was never conveyed to Baltimore County. Mr. Kennedy indicated the easement was not needed by the County; as

such, DPR did not object to the relief.

Testimony and evidence revealed that the subject property is approximately 7,274.5 square feet and is zoned DR 5.5. The Petitioners began construction of an attached carport (open on two sides), but were told by county inspectors that variance relief was needed. The enforcement case was held in abeyance, and this Petition was filed seeking relief from the 10 foot side yard setback requirement of the DR 5.5 zone.

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. As shown on the site plan, the property is of irregular dimensions, 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 carport/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 13th day of January, 2014, 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 carport/addition

open on 2 sides with a side yard setback of 4.3 ft. in lieu of the required 10 ft., 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