

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(1816 Morning Walk Dr.)</b>		
1 <sup>st</sup> Election District	*	OF ADMINISTRATIVE
1 <sup>st</sup> Council District		
Richard L. & Karen S. Roberts	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2014-0280-A</b>

\* \* \* \* \*

**AMENDED OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed on behalf of the legal owners of the subject property. The Petition as filed seeks variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) Sections 1B01.2.C.1.b and 301.1 to permit an existing screened deck with a rear yard setback of 16.5 ft. in lieu of the required 22.5 ft. The Petitioners’ engineer later determined that the existing setback was in fact 16.0 ft., rather than 16.5 ft., which necessitated this Amended Order. 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 request was Richard Roberts. Thomas Meachum, Esquire, represented the Petitioners. 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. A Zoning Advisory Committee (ZAC) comment was received from the Bureau of Development Plans Review (DPR) dated July 8, 2014. Mr. Kennedy noted the deck encroaches 4 ft. into a County drainage and utility easement. While DPR does not object to the deck remaining, Mr. Kennedy indicated that if in the future Baltimore County needed to use the easement, the encroaching portion of the deck would need to be removed, and could not be

reconstructed.

The property (improved with a single family dwelling) is approximately 0.2409± acres and is zoned DR 2. The Petitioners purchased the property in 2008, and constructed the deck shortly thereafter. The Petitioners are now in the process of selling their home, and a survey revealed that variance relief was required.

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 plan, the property is irregularly shaped, and is therefore unique. The Petitioners would experience a practical difficulty if the regulations were strictly construed, in that they would need to remove a portion of the deck. The variance can be granted in harmony with the B.C.Z.R. and without negatively impacting the health, safety and welfare of the community. This is demonstrated by the absence of County and/or community opposition. In addition, the deck has been in its present location for 6+ years, and there have been no complaints or concerns raised by neighbors.

THEREFORE, IT IS ORDERED, this 25th day of August, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Baltimore County Zoning Regulations (B.C.Z.R.) §§ 1B01.2.C.1.b and 301.1 to permit an existing screened deck with a rear yard setback of 16.0 ft. in lieu of the required 22.5 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to Baltimore County's drainage and utility easement (as shown on the Plat of "The Clusters," Plat Book S.M. 77, Folio 134) which adjoins

the property, as discussed above.

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

JEB:sln

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JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County