

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1151 Foxwood Lane)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Carol M. Holland	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2015-0146-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of the legal owner of the subject property. The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §1B02.3.C.1 to permit an existing deck (open projection) with a rear yard setback of 34 ft. in lieu of the minimum setback of 37.5 ft. The subject property and requested relief is more fully depicted on the revised site plan that was marked as Petitioner’s Exhibit 1.

Appearing at the hearing in support of the requests was William Bafitis, P.E., whose firm prepared the plan. There were no Protestants or interested citizens in attendance at the hearing. The Petition was advertised and posted as required by the B.C.Z.R. There were no substantive Zoning Advisory Committee (ZAC) comments received.

The subject property is approximately 0.050 acres, and is zoned DR 10.5. The property is improved with an 18' wide 2-story townhouse. The Petitioner recently constructed an uncovered deck in the rear of her home, and it was discovered that variance relief was needed for the rear yard setback.

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 Petitioner must contend with existing site conditions, and therefore the property is unique. If the B.C.Z.R. were strictly interpreted, Petitioner would experience a practical difficulty, given she would be required to demolish and reconstruct the deck. 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. In addition, the relief requested is modest (i.e., 3 ½ ft. variance) and the deck and home are attractive and well-maintained.

THEREFORE, IT IS ORDERED, this 2nd day of March, 2015, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("B.C.Z.R.") §1B02.3.C.1 to permit an existing deck (open projection) with a rear yard setback of 34 ft. in lieu of the minimum setback of 37.5 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at her own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject 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