

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(3807 East Joppa Road)</b>		
11 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
5 <sup>th</sup> Council District		
Joseph Norman	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2015-0159-A</b>

\* \* \* \* \*

**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.) §402.1 to permit a 7 ft. interior side setback in lieu of the required 25 ft. The subject property and requested relief is more fully depicted on the site plan that was marked as Petitioner’s Exhibit 1.

Owner Joseph Norman and Mitch Kellman, whose firm prepared the plan, appeared in support of the petition. Timothy Kotroco, Esquire represented the Petitioner. 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. Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) and Department of Planning (DOP). There will be a discussion below.

The subject property is approximately 0.2559 acres and is zoned DR 5.5. The property is improved with a single family dwelling constructed in 1957. Petitioner acquired the property recently from an elderly gentleman, and the site and dwelling had fallen into disrepair. Petitioner has cleaned up the lot, and proposes to convert the single family dwelling into a two-family

detached building, as permitted by B.C.Z.R. §402.1. To do so, Petitioner requires variance relief from an interior lot line 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 site is irregularly shaped and is therefore unique.

If the B.C.Z.R. were strictly interpreted, Petitioner would experience a practical difficulty, given he would be unable to convert the property to a two-family unit. 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.

THEREFORE, IT IS ORDERED, this 4<sup>th</sup> 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.") §402.1 to permit a 7 ft. interior side setback in lieu of the required 25 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 his 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.
2. Within 15 days of the date hereof, Petitioner must submit to Office of Administrative Hearings (OAH) a redlined site plan with the following revisions:

- a. show 7' interior side yard dimension
- b. Label on the plan the accessory building (shed) shown in the rear yard.
- c. Show the location and dimensions of the four required off street parking spaces.

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

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(3807 East Joppa Road)</b>		
11 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
5 <sup>th</sup> Council District		
Joseph Norman	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2015-0159-A</b>

\* \* \* \* \*

**ORDER ON MOTION FOR RECONSIDERATION**

Now pending is a Motion for Reconsideration filed by the Office of People’s Counsel. The Motion seeks reconsideration of a portion of the Order issued in the above case relating to whether or not a landscape plan is required. The March 4, 2015 Order provided that such a plan was not required, since the conversion in this case (from a single family dwelling to a 2-family dwelling) did not constitute a change in use or occupancy. The Order indicated that it was not readily apparent (in the opinion of the undersigned) that a change of occupancy would take place, and nothing in the Motion for Reconsideration, or the extracts of the International Residential Code attached thereto, sheds any light on this issue.

My thought process was that the owner was improving a rundown property, and there would be no changes whatsoever to the exterior of the premises. In these circumstances, I believe it is inequitable to require Petitioner to prepare and submit for County approval a landscape plan. Worth noting is that Mr. Kellman submitted a revised plan dated March 4, 2015 (in accordance with the Order of the same date) on which is shown proposed shrubbery along the eastern portion of the site.

In any event, given the uncertainty surrounding the “occupancy” issue, I will include the following condition (which will be condition #3 in the March 4, 2015 Order):

3. Petitioner or his consultants shall meet with the County's Landscape Architect to determine what landscape improvements are required in this scenario. Whether or not such improvements or a plan for same are required shall be determined in the sole discretion of Ms. Tansey.

WHEREFORE, IT IS ORDERED, this 17th day of March, 2015, by the Administrative Law Judge for Baltimore County, that the Motion for Reconsideration be and is hereby GRANTED, such that condition #3 identified immediately above shall be deemed incorporated into the Order dated March 4, 2015. All other terms and conditions of that Order shall remain in full force and effect.

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