

IN RE: PETITION FOR VARIANCE
(2110 Rosalie Avenue)
15th Election District
6th Council District
Mary Gast
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2015-0018-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 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 and 301.1.A to permit a dwelling with a rear yard setback of 18 feet and an open deck with a setback of 10 feet in lieu of the required 30 feet and 22.5 feet, 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 request was Mary Gast. David Billingsley, whose firm prepared the site plan, appeared on behalf of the Petitioner. Several neighbors attended the hearing and opposed the requests, and the file also contains several letters of opposition from the community. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) concerning the flood protection elevation and from the Department of Environmental Protection and Sustainability (DEPS), which noted Petitioner would need a critical area variance.

The subject property is approximately 0.48 acres and is zoned DR 3.5. The property is

unimproved, and the Petitioner proposes to construct a single family dwelling on the site, which would require variance relief.

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 not met this test. The reality in Baltimore County is that variance relief can be easily obtained or nearly impossible to obtain, depending on the circumstances. The great majority of the variances granted concern mundane matters, like the setback required for a backyard deck. In most cases, such requests are unopposed and are routinely granted. In fact, the Baltimore County Code contains an administrative procedure whereby an owner can obtain variance relief without a public hearing. Baltimore County Code (B.C.C.) §32-3-303. In either of these scenarios, the petitioner is granted relief without a searching or rigorous analysis of zoning law.

But when, as here, a variance request is opposed, the practice has been to require the petitioner to demonstrate the uniqueness of the property and that she would experience a practical difficulty if the regulations were strictly interpreted. This is a burden that few litigants can satisfy. Maryland courts hold that “variances are rarely appropriate,” and the Cromwell court noted that since 1927 only five reported cases have affirmed the grant (or reversed the initial denial) of a petition for variance. Cromwell v. Ward, 102 Md. App. 691, 711 (1995).

Here, the site plan shows the property is nearly square, and thus I do not believe that aspect is unique. There are no significant topographical changes throughout the site, and that also cannot serve as a unique characteristic. The majority of the lot would be subject to a critical

area easement, and the Petitioner is left with just a small building envelope for the dwelling. In these circumstances, I believe the house would need to be shoe-horned onto the lot, and the grant of relief would be detrimental to the welfare of the community.

THEREFORE, IT IS ORDERED, this 12th day of September, 2014, 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 and 301.1.A to permit a dwelling with a rear yard setback of 18 feet and an open deck with a setback of 10 feet in lieu of the required 30 feet and 22.5 feet, respectively, 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