

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(404/406 E. Pennsylvania Avenue)</b>		
9 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
5 <sup>th</sup> Council District		
Heather Wirth & Samuel Bogucki	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2016-0136-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 Heather Wirth & Samuel Bogucki, legal owners of the subject property (“Petitioners”). Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed open projection (deck) to have a rear yard setback of 23 feet in lieu of the allowed 37.5 feet. A site plan was marked as Petitioners’ Exhibit 1.

Heather Wirth and Samuel Bogucki appeared in support of the Petition. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. No substantive Zoning Advisory Committee (ZAC) comments were received.

The subject property is approximately 4,845 square feet and is zoned DR 10.5. The property is improved with a dwelling that was determined in Case No. 2013-0141-SPH to be a lawful nonconforming “multi-family” (semi-detached) structure. It contains two separate living units.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical

difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Petitioners have met this test. The property is unique given the presence of the nonconforming structure, which was built in 1903. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the proposed open projection (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 Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED, this 4<sup>th</sup> day of April, **2016**, 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.”) to permit a proposed open projection (deck) to have a rear yard setback of 23 feet in lieu of the allowed 37.5 feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners 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.

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB/sln