

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(516 Wilton Road)		
9 th Election District	*	OFFICE OF ADMINISTRATIVE
5 th Council District		
Robert K. & Pricilla Brooks Smith,	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2016-0115-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed for property located at 516 Wilton Road. Petitioners are requesting variance relief from Section 1B01.2.C.1.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard addition and deck with a rear setback of 14 ft. in lieu of the required 22.5 ft. The Petitioners indicated they no longer plan to construct a deck attached to the proposed rear yard addition. As such, the variance request is for a 23 ft. setback in lieu of the required 30 ft. While not dispositive, the modified request proposes a larger setback (and therefore a more modest variance request) which is a factor in evaluating the petition.

This matter was originally filed as an Administrative Variance, with a closing date of November 30, 2015. On November 24, 2015, Wiltondale Improvement Association requested a hearing. The hearing was held on Friday, January 8, 2016 at 10:00 AM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

The subject property is approximately 8,750 square feet and is zoned DR 5.5. The property is improved with a single-family dwelling constructed in 1941. Petitioners have a large family and would like to construct an addition in the rear of the dwelling, but require zoning relief to do

so. The community association opposes the request and believes the setbacks required by the B.C.Z.R. should be enforced.

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 necessitates 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. Following the hearing, Petitioners submitted an analysis of over 200 single-family dwellings in the Wiltondale community. While many homes had garages, only two homes (Petitioners' and 604 Wilton) had a front facing attached garage in the side yard. This attribute renders the property unique, and also drives the need for variance relief since the side yard is the only realistic and palatable option for expansion of the home, and doing so would require Petitioners to raze the existing garage. If the B.C.Z.R. were strictly interpreted, Petitioners would experience a practical difficulty, given they would not be able to construct the addition to provide additional living space for their large family. 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.

THEREFORE, IT IS ORDERED, this 12th day of **January, 2016**, by this Administrative Law Judge, that the Petition for Variance to permit a rear yard addition with a rear setback of 23 ft. in lieu of the required 30 ft., 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.

_____Signed_____

JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:dlw