

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(6624 Aaron Mee Way)		
14 th Election District	*	OFFICE OF ADMINISTRATIVE
6 th Council District		
Son T. Doan	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	CASE NO. 2016-0074-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owner of the property, Son T. Doan. The Petitioner is requesting Variance relief from §§ 1B02.3.C.1 and 301.1.A of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows: (1) to permit a proposed open projection (deck) to have a rear yard setback of 13.5 ft. in lieu of the required 22.5 ft.; and (2) to amend the Final Development Plan (FDP) of Lennings Crossing, Lot 24 only. 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.

This matter was originally filed as an Administrative Variance, with a closing date of October 19, 2015. On November 2, 2015, neighbors Arnel and Dyleen Abesamis requested a hearing. The hearing was held on Monday, December 28, 2015 at 11:00 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. There were no substantive ZAC comments received from any of the County reviewing agencies.

The subject property is approximately 6,207 square feet and is zoned DR 3.5. The property is improved with a single family dwelling which was constructed in 2005 and the Petitioner is the original owner. Petitioner would like to construct a deck in the rear yard which would provide

additional living space and an area for his children to play. Petitioner explained that his rear yard slopes downward, and that a deck would be the only way to provide a flat and safe area for his children to play.

The neighbors whose lot adjoins the rear of Petitioner's property object to the request. Mr. and Mrs. Abesamis, who reside at 6623 Kelly Ann Way, stated the proposed deck is too large and they feared it would infringe on their privacy and enjoyment of their home. According to County records, Mr. & Mrs. Abesamis obtained a variance (Case No. 2007-0159-A) for a deck in 2007, permitting a 17 ft. setback in lieu of the required 22.5 ft. In addition, Petitioner's neighbor obtained a variance for a deck in 2006 (Case No. 2006-0603-A) permitting an 18 ft. setback in lieu of the required 22.5 ft.

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).

Petitioner has met this test. The property has irregular dimensions and a sloped rear yard. As such, it is unique. If the regulations were strictly interpreted Petitioner would experience a practical difficulty in that he could not construct a deck of sufficient size. I also believe the grant of variance relief will not negatively impact the community's health, safety, and welfare. I am however mindful of the concerns raised by the neighbors, and the Order below will grant variance relief, although not to the extent requested by Petitioner.

THEREFORE, IT IS ORDERED, this **4th** day of January, **2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance relief from §§ 1B02.3.C.1 and 301.1.A of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows: (1) to permit a

proposed open projection (deck) to have a rear yard setback of 17 ft. in lieu of the required 22.5 ft.; and (2) to amend the Final Development Plan (FDP) of Lennings Crossing, Lot 24 only, in accordance with the terms of this Order, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for permits and be granted same upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appeal period from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- Petitioner must construct an opaque fence or panel along the rear portion of the deck to screen the view to and from 6623 Kelly Ann Way.

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:slh