

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(3457 Loganview Drive)		
12 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Paul and Joy Halcott	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners	*	CASE NO. 2016-0311-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of Paul and Joy Halcott, legal owners of the subject property (“Petitioners”). Petitioners request variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §301 to permit an existing open projection (deck with swimming pool) to have a rear yard setback of 10 ft. in lieu of the required 22.5 ft. A site plan was marked as Petitioners’ Exhibit 1.

Paul Halcott appeared in support of the Petition. No Protestants or interested citizens attended the hearing. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). Both agencies recommended fencing be provided along the rear property line to screen the adjoining property.

The subject property is approximately 5,100 square feet and is zoned DR 5.5. The property is improved with a single family dwelling constructed in 1951. Petitioners engaged a contractor last year to construct a deck and pool in their rear yard. They were later informed by a zoning inspector that a variance would be required to keep the pool in its current location.

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 Petitioners must contend with existing site conditions and the property is therefore unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be required to raze or relocate their deck and pool. 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 16th day of August **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) §301 to permit an existing open projection (deck with swimming pool) to have a rear yard setback of 10 ft. in lieu of the required 22.5 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.
2. Petitioners must comply with the ZAC comment of the DOP, a copy of which is attached.

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/sln