

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(11041 Greenspring Avenue)		
8 th Election District	*	OF ADMINISTRATIVE
2 nd Council District		
E. Dale III & Marlene A. Adkins	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2016-0319-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 E. Dale III and Marlene A. Adkins, legal owners of the subject property (“Petitioners”). Petitioners request variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) § 301 to permit a proposed open projection (patio, terrace and swimming pool) to have a side yard setback of 8 ft. in lieu of the required 26.25 ft. A site plan was marked as Petitioners’ Exhibit 1.

E. Dale III & Marlene Adkins and Bruce Doak, surveyor, appeared in support of the Petition. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. No substantive Zoning Advisory Committee (ZAC) comments were submitted by any of the county agencies.

The subject property is approximately 2.91 acres and is zoned RC-2. Petitioners are in the process of constructing a new single family dwelling on the property, as well as a terraced area with a pool. The Zoning Office determined these amenities were “attached to the main building,” and Petitioners therefore required variance relief from the open projection regulations.

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 lot is irregularly shaped and there are topographical features which constrain the building envelope. As such, the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would not be able to construct the proposed terraces 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 9th 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 a proposed open projection (patio, terrace and swimming pool) to have a side yard setback of 8 ft. in lieu of the required 26.25 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