

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Bird River Grove Rd., 3,969'		
E of c/line of Ebenezer Road	*	OFFICE OF
15 th Election District		
6 th Council District	*	ADMINISTRATIVE HEARINGS
(11116 Bird River Grove Road)		
	*	FOR BALTIMORE COUNTY
Wayne Allen Sody		
Petitioner	*	CASE NO. 2012-0259-A

* * * * *

MOTION FOR RECONSIDERATION
OPINION AND ORDER

By Order dated June 1, 2012, the undersigned denied Petitioner’s Variance request from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.). At that juncture, the Petitioner sought variance relief to permit a rear yard setback of 2’ for a proposed addition and a front yard setback of 9’ for an existing dwelling in lieu of the 35’ setbacks required under the RC 2 designation. On June 20, 2012, the Petitioner, through counsel, filed a Motion for Reconsideration pursuant to Rule 4K of the Rules of Practice and Procedure before the Zoning Commissioner.

A hearing was held on the Motion for Reconsideration on August 28, 2012. At the hearing, counsel for the Petitioner indicated that the site plan submitted in the original case incorrectly labeled the front and rear of Mr. Sody’s home, and an amended site plan was submitted (Exhibit 1) reflecting that the front of the Petitioner’s home faces the water. As such, the variance relief sought is for side yard setbacks of 9’ and 7’, respectively, in lieu of the 35’ setbacks specified under the RC 2 zoning.

In addition, counsel for Petitioner made at the outset of the case a legal argument, contending that variance relief was not required for the Petitioner to construct the addition to his dwelling. In support of this argument, counsel submitted a Plat of Section B – Bird River Grove, which is dated October, 1941. See Exhibit 6. In addition, a State Assessment record was

submitted showing that the Petitioner's home was constructed in 1948. *See*, Exhibit 5. In these circumstances, counsel argued that Section 103.3 of the B.C.Z.R. governed, and dictated that the applicable zoning regulations were those in effect at the time the plat was recorded. In this case, the plat submitted by the Petitioner does not contain a liber or folio number, or evidence of its filing among the Land Records in Baltimore County. As noted, however, the State assessment records show that the Petitioner's dwelling was constructed in 1948. On February 2, 1945, Baltimore County enacted its first set of zoning regulations and restrictions, which were in effect until July 2, 1953. Under those regulations, the Petitioner's single-family dwelling was permitted as of right in the "A" residence zone. *See*, Exhibit 7. Those same regulations provided that side yard setbacks must be "not less than seven feet in width along each side lot line." B.C.Z.R. (1945), § III C.3. *See*, Exhibit 7.

In this case, as reflected by the site plan, the Petitioner proposes setbacks of 9' (on the side where Mr. Sody's home adjoins lot 9 owned by Ms. Spliedt) and 7' (on the side of Mr. Sody's lot which adjoins lot 7, owned by Stanley and Florence Finch). Both of these setbacks are in compliance with the 1945 zoning regulations, and thus it does not appear as if the Petitioner needs variance relief to construct the proposed addition to his home.

As I noted at the hearing, this case is in an unusual posture, in that the Petitioner originally filed for variance relief, and later argued that he did not need such relief to construct the proposed improvements. In these circumstances, I will permit the Petitioner to withdraw, without prejudice, his petition for variance relief. As such, the variance denial contained in the Order dated June 1, 2012, is null and void, and it is as if the Petitioner had never requested variance relief in the first instance.

Of course, the zoning regulations in Baltimore County are enforced by the Department of Permits, Approvals, and Inspections (PAI), not this office. As such, it is conceivable that the Department of PAI would not concur with my Opinion herein and prohibit the Petitioner from proceeding with construction under Article 3, Title 6, of the Baltimore County Code (B.C.C.). At the hearing, counsel for Petitioner indicated that the Director of the Department of PAI was aware of this proceeding, and was of the opinion that Mr. Sody did not need variance relief to construct the addition to his home. As such, it appears that a zoning violation/enforcement action would be unlikely in these circumstances, but I simply wanted to alert the parties to that potentiality, especially given the unusual posture of this case.

THEREFORE, IT IS ORDERED, this 29th day of August, 2012, by this Administrative Law Judge, that the Petition for Variance filed in the above matter, be and hereby is WITHDRAWN WITHOUT PREJUDICE.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JEB:dlw

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County