

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(5533 Windsor Mill Road)		
1 st Election District	*	OF ADMINISTRATIVE
1 st Council District		
John E. Phair	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2017-0081-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by John E. Phair, owner of the subject property (“Petitioner”). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R) to permit a front addition with a front yard setback of 22 ft. in lieu of the front averaging of 31 ft. A site plan was marked as Petitioner’s Exhibit 1.

John Phair appeared in support of the petition. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not support the request, and believed the addition would be too close to Windsor Mill Road.

The property is approximately 4,800 square feet in size and is zoned DR 5.5. The property is improved with a small single family dwelling constructed in 1951. Petitioner would like to create additional living space, and proposes to construct an addition along the front of the existing home. A variance is required to do so.

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).

Petitioner has met this test. The property is narrow and deep (40' x 120') and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be unable to construct the proposed addition. 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. This is demonstrated by the lack of community opposition.

I am mindful of the DOP's ZAC comment, and agree Petitioner needs to improve the appearance of the property. Mr. Phair indicated he is in the process of organizing and neatly stacking the construction materials in the rear yard, which will be used to complete the proposed addition. While the structure will be located somewhat close to Windsor Mill Road, the reality is that the addition will protrude into the front yard no further than the existing covered porch. Thus, I believe the same risk exists at present, although it is true the proposed improvements will involve enclosed living space compared to an open front porch with a roof. In addition, Petitioner presented several photos which show other houses in the vicinity are situated a similar distance from Windsor Mill Road, and thus I believe the addition would be compatible with the neighborhood.

THEREFORE, IT IS ORDERED, this 22nd day of November, **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) to permit a front addition with a front yard setback of 22 ft. in lieu of the front averaging of 31 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his 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, Petitioner 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:sln