

|                                     |   |                             |
|-------------------------------------|---|-----------------------------|
| <b>IN RE: PETITION FOR VARIANCE</b> | * | BEFORE THE OFFICE           |
| (106 Smithwood Avenue)              |   |                             |
| 1 <sup>st</sup> Election District   | * | OF ADMINISTRATIVE           |
| 1 <sup>st</sup> Council District    |   |                             |
| David G. Schiavone                  | * | HEARINGS FOR                |
| <i>Legal Owner</i>                  |   |                             |
|                                     | * | BALTIMORE COUNTY            |
| Petitioner                          |   |                             |
|                                     | * | <b>CASE NO. 2017-0095-A</b> |

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by David G. Schiavone, owner of the subject property (“Petitioner”). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R) to permit proposed additions with a side yard to side street setback of 25 ft., and side yard setback of 2 ft. (with a sum of side yard setbacks of 27 ft.) in lieu of the required 40 ft. and 15 ft. (sum of 40 ft.). A site plan was marked as Petitioners’ Exhibit 1.

David G. Schiavone and professional engineer Rick Richardson appeared in support of the petition. Several neighbors attended and opposed certain aspects of the requests. 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 opposed 1 of the variances requested.

The property is approximately 14,720 sq. ft. and is zoned DR 2. The property is improved with a large single family dwelling (SFD) constructed in 1919. Petitioner recently acquired the home, which is in poor condition. Petitioner proposes to renovate and enlarge the structure, but variances are 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 lot has irregular dimensions and was created long before the adoption of the B.C.Z.R. As such it is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be unable to construct the proposed additions. 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 7<sup>th</sup> day of December, 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 proposed addition on the north side of the property with a side yard to side street setback of 25 ft., (with a sum of side yard setbacks of 39 ft.) in lieu of the required 40 ft. sum of side yards, and to permit a detached accessory building (garage) to be located in the third of the lot that is not farthest removed from any street, 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.

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln