

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(503 Academy Road)		
1 <sup>st</sup> Election District	*	OF ADMINISTRATIVE
1 <sup>st</sup> Council District		
Penguin Properties, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2017-0211-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 Penguin Properties, LLC, owner of the subject property (“Petitioner”). The Petitioner is requesting variance relief from Section 402.1 of the Baltimore County Zoning Regulations (B.C.Z.R) to allow an existing side yard setback of 8 ft. in lieu of the required 15 ft. A site plan was marked as Petitioner’s Exhibit 1.

Benjamin Smith and architect Robert Weaver appeared in support of the petition. Timothy Manuelides, Esq., represented the Petitioner. Several neighbors attended the hearing to learn more about the project and express concerns regarding the request. 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 oppose the request but identified one concern (related to an existing garage in the rear yard) which will be addressed in the Order below.

The property is approximately 35,460 square feet and is zoned DR 5.5. The property is improved with a single-family dwelling constructed in 1915. The dwelling is uninhabitable as shown in the photos submitted at the hearing. Petitioner’s Ex. 3. Petitioner proposes to renovate the dwelling, which will contain two separate apartments or living units (i.e., what was formerly

known as a “duplex” but is now called a “two-family dwelling”). The existing home will not be repositioned or relocated on the lot, and the footprint and/or height of the dwelling will not be increased or enlarged.

As mentioned at the hearing in response to a question from the community, a two-family dwelling is permitted in this case since Petitioner satisfies the dimensional requirements for the DR 5.5 zone as set forth in B.C.Z.R. §402.1. Although Petitioner requests a variance for a side yard setback, the same 15 ft. side yard requirement applies to both “single-family detached” dwellings and “two-family” dwellings in the DR 5.5 zone. Compare B.C.Z.R. §§ 1B01.2.C.1.b & 402.1. In other words, even assuming Petitioner planned to renovate the home and use it as a “single-family detached” dwelling, a side yard variance would still be required.

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 is narrow and deep (100 ft. x 370 ft.). In addition, Petitioner must contend with site conditions which have existed for over 100 years. As such, the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be required to raze or relocate the dwelling. 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. At present this vacant property is an eyesore, and the improvements proposed by Petitioner will greatly enhance the appearance of the dwelling.

THEREFORE, IT IS ORDERED, this 24<sup>th</sup> day of **March, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to B.C.Z.R. §402.1 to allow an existing side yard setback of 8 ft. in lieu of the required 15 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 its 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.
2. As part of the overall renovation of the subject property the existing accessory structure must also be renovated with materials matching those used for the principal dwelling.

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