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| IN RE: PETITION FOR ADMIN. VARIANCE | * | BEFORE THE |
| (6339 Frederick Road) | | |
| 1 st Election District | * | OFFICE OF ADMINISTRATIVE |
| 1 st Council District | | |
| Everett G. Sillers & Gregory R. Beal | * | HEARINGS FOR |
| Petitioners | | |
| | * | BALTIMORE COUNTY |
| | * | CASE NO. 2017-0272-A |

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owners of the property, Everett G. Sillers & Gregory R. Beal (“Petitioners”). The Petitioners are requesting variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed side yard addition with a 0 ft. side setback and to permit an existing street side setback (Cedarwood Rd. side) of 6 ft. in lieu of the required 10 ft. and 25 ft., respectively. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Planning (DOP) dated April 14, 2017 indicating the following:

“The Department cannot recommend approval of a 0 foot setback unless the petitioners can demonstrate to the satisfaction of the Administrative Law Judge that the addition can be constructed and maintained without trespass or that an access easement is recorded. The Department has no objection to the continued non-conforming 6 foot street side setback.”

In response to DOP’s ZAC comment above, the undersigned received additional information from John McKay, Dream Design Build & Remodeling (via email on April 20, 2017),

which confirms that the addition can be constructed and maintained without trespass given that the existing fence on the property line will remain and no trespassing onto neighboring yards will be necessary or possible. Mr. McKay attached a larger-scale site plan and noted that in fact the property addition would be no closer than 1 ft. 9 in. to the property line. In this scenario, I believe a minimum setback of 2 ft. must be maintained, to allow for construction and maintenance of the structure (and the existing fence) without intruding upon neighboring properties. As such, the order will grant the variance for a 2 ft. side yard in lieu of the required 10 ft.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on April 16, 2017, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information and photographs submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this **8th** day of **May, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed side yard addition with a 2 ft. side setback and to permit an existing street side setback (Cedarwood Rd. side) of 6 ft. in lieu

of the required 10 ft. and 25 ft., respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for their appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said 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