

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(6817 Real Princess Lane)		
2 nd Election District	*	OF ADMINISTRATIVE
4 th Council District		
Innocent Akpuaka	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2017-0305-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Innocent Akpuaka, owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from §§ 1B02.3 and 301.1 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit an existing open projection (deck) with a window to track boundary setback as close at 19 ft. in lieu of the required 26.24 ft. and to amend the Final Development Plan (FDP) of Mahogany Park, Lot No. 15 only. A site plan was marked as Petitioner’s Exhibit 1.

Innocent Akpuaka 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 oppose the request.

The site is approximately 7,187 square feet in size and zoned DR 5.5. The property is improved with a single family dwelling, and Petitioner has owned the property since 2005. Petitioner constructed a deck off the rear of the home, and enclosed an area underneath of the deck which he uses for storage of household items. Petitioner provided photos of the enclosed space under the deck and it is an unfinished space with no plumbing or electric service. As such,

I believe the improvement is accurately described as an open projection rather than an addition, since the enclosed portion will not increase the living space of the dwelling.

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 has irregular dimensions and is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be required to raze the existing improvements. Finally, I find that the variances 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 and/or Baltimore County opposition.

THEREFORE, IT IS ORDERED, this 3rd day of **July, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition to permit an existing open projection (deck) with a window to track boundary setback as close at 19 ft. in lieu of the required 26.24 ft. and to amend the Final Development Plan (FDP) of Mahogany Park, Lot No. 15 only, 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.
2. The enclosed storage space beneath the deck shall be finished in materials matching those found on the dwelling.

3. Petitioner must within 30 days of the date hereof restore the lawn and landscaping which was disturbed during construction of the deck.

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