

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(962 Lance Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Donna Lee Dolly & Theresa M Ash	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2018-0021-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Donna Lee Dolly and Theresa M. Ash, the legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from §§ 301.1.A and 1B02.3.B of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to permit an existing attached carport to the side of the dwelling with a 2 ft. side yard setback in lieu of the required 7½ ft.; and (2) to permit an attached addition to the side and rear of the existing dwelling with a side yard setback of 1.8 ft. in lieu of the required 7 ft., respectively. A site plan was marked as Petitioners’ Exhibit 1.

Donna Dolly & David Billingsley 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 Environmental Protection and Sustainability (DEPS).

The site is approximately 6,283 sq. ft. in size and zoned DR 5.5. The property is improved with a single family dwelling constructed in 1954. There is a carport connected to the dwelling which was constructed prior to Petitioners’ purchase of the property in 2000. Recently Petitioners hired a contractor to construct an addition which, although it is attached to the dwelling, is only

accessible through exterior doors. This was done without proper permits, and Baltimore County imposed civil penalties against the property for the code violation. Petitioners seek variance relief to “legitimize” the addition and carport.

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).

The property has irregular dimensions and is therefore unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be required to raze the new addition.

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. In addition, conditions will be included below to prevent the addition from being used as living space.

The DOP requested confirmation that the 22 ft. rear setback shown on the plan complies with the B.C.Z.R. As Mr. Billingsley noted, the plat for this development was approved by the Planning Commission in 1953, which means the R6 regulations are applicable. B.C.Z.R. §1B02.3.A.1. Under those Regulations the required setback is 20 ft.

THEREFORE, IT IS ORDERED, this 11th day of **September, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §§ 301.1.A and 1B02.3.B of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows:

(1) to permit an existing attached carport to the side of the dwelling with a 2 ft. side yard setback in lieu of the required 7 1/2 ft.; and (2) to permit an attached addition to the side and rear of the existing dwelling with a side yard setback of 1.8 ft. in lieu of the required 7 ft., respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must prior to issuance of permits comply with the Chesapeake Bay Critical Area Regulations.
3. The attached addition must be constructed of fire-rated materials as specified in the Baltimore County Building Code.
4. There shall be no living quarters, bathroom and/or kitchen facilities in the attached addition.
5. The attached addition shall not be accessible from the interior of the dwelling.

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