

IN RE: PETITION FOR VARIANCE

(12500 Jerusalem Road)
11th Election District
5th Council District
Kurt Heydt
Petitioner

*
*
*
*
*

BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2018-0106-A

* * * * *

OPINION AND ORDER

This matter (which originated as a petition for an administrative variance) comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed on behalf of Kurt Heydt, the legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from § 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) To permit an addition with the setbacks of 12.3 ft. +/- and 32.0 ft. +/- in lieu of the required 50.0 ft. from any lot line, respectively; and to amend the "Final Development Plan Re-subdivision of Lot No. 1, Burman Property" for Lot 1A only; and (2) Any additional relief as may be deemed necessary by the Administrative Law Judge (“ALJ”). A site plan was marked as Petitioner’s Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of November 6, 2017. On October 30, 2017, Brian and Donna Radcliffe who live at 12448 Jerusalem Road requested a hearing. The hearing was held on Tuesday, January 16, 2018 at 1:30 PM in Room 104 of the Jefferson Building, 105 West Chesapeake Avenue, Towson. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

Property owner Kurt Heydt and professional engineer John Motsco appeared in support of the petition. Adjacent neighbors Brian and Donna Radcliffe attended the hearing in opposition. The Petition was advertised and posted as required by the B.C.Z.R. There were no adverse Zoning Advisory Committee (“ZAC”) comments received by any of the County reviewing agencies; however, the Department of Planning (“DOP”) noted that the proposed addition was for garage and storage space and should not be used as a residence or for commercial purposes.

The site is approximately 1.243 acres in size and zoned RC 5. The property is improved with a 2 ½ story dwelling. Petitioner explained he has lived at the property for nearly 20 years, and now needs additional space to store vehicles and household items. Petitioner stated the two-story addition would have an unfinished first floor, with an internal stairway which would access a second floor storage space.

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 an irregular shape and the dwelling is skewed on the lot. As such, the property is arguable unique. But at the same time, the proposed addition could have a negative impact upon the neighbors at 12448 Jerusalem Road. In this regard, Mr. Radcliffe’s point is a valid one: the proposed two-story structure (30’x 30’) would be 1,800 square feet in size and just 12 ft. from the property boundary. The addition would be as large as some single-family dwellings and the setback would barely satisfy the requirements for yard setbacks in residential zones. Of course this is an RC zone, and the proposed 12 ft. setback is less than 25% of the buffer required. B.C.Z.R.

§1A04.3.

As discussed at the hearing, the Petitioner may choose to construct the proposed addition in a different location, which may or may not require a variance. Should he decide to do so I would not want him to be precluded by *res judicata* from seeking zoning relief at a later date, if that was required. As such, rather than deny the variance requested herein, the Petition will be dismissed without prejudice.

THEREFORE, IT IS ORDERED this 18th day of **January, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“B.C.Z.R”), to permit an addition with setbacks of 12.3 ft. +/- and 32.0 ft. +/- in lieu of the required 50.0 ft. from any lot line, respectively; and to amend the "Final Development Plan Re-subdivision of Lot No. 1, Burman Property" for Lot 1A only, be and is hereby DISMISSED without prejudice.

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