

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(213 Glider Drive)	*	OFFICE OF
15 th Election District		
6 th Council District	*	ADMINISTRATIVE HEARINGS
Margaret Geigan and Monica Geigan	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	Case No. 2018-0252-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Margaret and Monica Geigan, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve and confirm that an uncovered open deck does not obstruct light and ventilation. A petition for variance/waiver seeks to permit a proposed fence with a height of 8 ft. in lieu of the maximum 6 ft. (located on property line in lieu of the 4 ft. required setback). A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Margaret and Monica Geigan appeared in support of the requests. The adjoining neighbors opposed the special hearing request and contend the deck (which has been constructed) is too close to their home and obstructs their light and air. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. The Department of Planning indicated in a comment dated April 19, 2018 it did not object to the zoning requests.

The subject property is 6,252 square feet in size and is zoned DR 5.5. As shown on a recent boundary survey (Pets. Ex. No. 2) the property is comprised of Lot 22 and a part of Lot 22A as

shown on the Plat of Victory Villa, recorded in 1956. The property is improved with a single-family dwelling constructed in 1942.

Petitioners in April, 2017 hired a licensed contractor to construct a deck in their rear yard. The contractor obtained a building permit dated April 6, 2017 (No. B933821) which in a section entitled "Lot Size and Setbacks" listed the side setback as "NC." It is unclear what this abbreviation means, although the permit indicated the rear yard setback requirement was 30 feet, which is ostensibly correct in the DR 5.5 zone. BCZR §1B02.3.C.1. By letter dated July 19, 2017, Baltimore County cancelled the permit "because the setback does not meet the zoning regulations."

SPECIAL HEARING

This is an unfortunate case, and through no fault of their own Petitioners are embroiled in a controversy with their neighbors, contractor and Baltimore County. A licensed contractor constructed a deck after obtaining a valid permit, and the County issued a code enforcement citation which would require Petitioners to relocate/reconstruct the deck or obtain a variance legitimizing the existing location.

As discussed at the hearing, variance relief for the side yard setback was not requested in the petition, although it does appear to be required. Petitioners' dwelling was constructed in 1942 and the plat for the community was recorded in 1956 at plat book 22, page 114. The plat was approved on January 30, 1956 by the Director of the Baltimore County Planning Board. In these circumstances, the setbacks required for an addition or expansion of a dwelling "shall be as prescribed by the zoning regulations applicable to such use at the time the plan was approved by the Planning Board." BCZR §1B02.3.B. The Victory Villa plat was approved in 1956, at which time the 1955 zoning regulations (adopted March 30, 1955) were applicable.

The 1955 Regulations (Section 211.3) imposed an eight (8) ft. side yard setback requirement for dwellings, and the site plan shows Petitioners' dwelling is in fact eight feet from the property boundary shared with 211 Glider Drive. The 1955 Regulations (Section 301.1) also allowed an "open porch, with or without a roof" to extend 25% into the required side yard setback. In other words, under those regulations the deck must be located six (6) feet from the side property boundary. According to the site plan, Petitioners' deck is located three (3) feet from the property line in lieu of the six feet required, and a variance is needed for that deficiency.

The zoning review office indicated on the petition the property was vested as an "A" residence under the 1945 Regulations. Under Section X.A.2 of the 1945 zoning regulations (also cited in the petition) an "open porch" can be constructed in a rear or side yard provided doing so does not "obstruct light and ventilation." No specific side yard setback for an open porch or deck was required in the 1945 Regulations. But as noted above, I respectfully disagree with the zoning office and believe under BCZR §1B02.3.B it is the 1955 Regulations (not the 1945 Regulations) which are applicable in this case. As such, whether or not the deck "obstructs light and ventilation" is not the pertinent inquiry.

VARIANCE

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 subject property has irregular dimensions and unlike other homes in the community the dwelling is located on one lot and a portion of an adjoining lot. As such, I believe the property

is in fact unique. Petitioners would experience a practical difficulty (if not a hardship) if relief was denied, since they would be required to relocate or reconstruct the deck.

I am not unsympathetic to the concerns raised by the neighbors, but I do not believe (as they alleged) the reduced setback has caused an increase in their utility bills. The neighbors also contend the deck shades their property, and while that may be true to a certain extent I think such impacts are often unavoidable in a neighborhood where the homes are positioned close to one another. As Petitioners noted, they would be entitled to have a tree in their yard in the same location occupied by the deck, and that would likely cause as much, if not more, shading of the neighbors' home. In addition, while a six (6) foot setback is required, the 1955 Regulations also permit decks or porches to be covered by a roof. Assuming for sake of argument Petitioners constructed the deck 6 feet from the property line, but covered it with a roof, the neighbors' home would likely be shaded to a greater extent than at present.

FENCE WAIVER

The petition also contains a request for a waiver under Section 122.4 of the Building Code, to permit a fence in the side and rear yard with a height of 8 ft. in lieu of the maximum 6 ft. The neighbors indicated they had no opposition to this request, which will be granted.

THEREFORE, IT IS ORDERED this 8th day of **June, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("BCZR") to approve and confirm that an uncovered open deck does not obstruct light and ventilation, be and is hereby DISMISSED as unnecessary.

IT IS FURTHER ORDERED that the Petition for Variance to permit a 3 ft. side yard setback for an open projection (deck) in lieu of the 6 ft. required, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Waiver to permit a fence 8 ft. in height in lieu of the maximum 6 ft. (and located on the property line in lieu of the 4 ft. required setback), 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. The deck shall remain open on all sides and shall not be covered with a roof or enclosed to create additional indoor living space.

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