

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(704 Hunter Way)		
1 <sup>st</sup> Election District	*	OF ADMINISTRATIVE
1 <sup>st</sup> Council District		
Trina Culbreath	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2019-0037-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Trina Culbreath, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief pursuant to the Baltimore County Zoning Regulations (“BCZR”) to permit an existing rear yard addition with a rear setback of 19 ft. in lieu of the required 40 ft. A site plan was marked as Petitioner’s Exhibit 1.

Trina Culbreath 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 BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) and the Bureau of Development Plans Review (“DPR”). Neither agency opposed the request.

The site is approximately 7,517 sq. ft. in size and zoned DR 2. The property is improved with a single-family dwelling constructed in 1987. Petitioner has owned the property for 11 years, and she recently replaced the deck off the rear of the home. She indicated that original deck was constructed of wood and that the boards were rotting and unsightly. The new deck, which also has an enclosed sunroom, occupies a smaller footprint than the original deck; i.e., it is no closer to the stream which adjoins her property.

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 Petitioner would experience a practical difficulty because she would be required to remove or relocate the deck. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of County and/or community opposition.

The Bureau of DPR noted in its ZAC comment the deck is 19 feet from the flood plain boundary, and that agency suggested a waiver was needed to address this issue. Under County regulations and the Department of Public Works (DPW) Design Manual, all structures and improvements must be located at least 20 feet from the 100-year riverine flood plain. As discussed at the hearing, the zoning petition will be amended to that effect and a waiver will be granted to approve this existing condition.

THEREFORE, IT IS ORDERED, this 11<sup>th</sup> day of **October, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit an existing rear yard addition with a rear setback of 19 ft. in lieu of the required 40 ft., be and is hereby GRANTED.

IT IS FURTHER ORDERED that the request for waiver, to approve a setback of 19 feet from the 100-year flood plain limit in lieu of the 20 feet required, 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 her 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) Petitioner must comply with the ZAC comment of DEPS, a copy of which is attached hereto.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB/sln