

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(9 Schooner Bay Ct.)		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Council District		
Jeff and Heather Lyon	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2019-0404-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 Jeff and Heather Lyon, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from Section 301.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit an open projection deck with a side yard setback of 0 ft. and rear yard setback of 2 ft. in lieu of the required 11.25 ft. setbacks, respectively. A site plan was marked as Petitioners’ Exhibit 1.

Jeff Lyon appeared in support of the petition. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”). Neither agency opposed the requested relief.

The site is approximately 6,098 sq. ft. in size and is zoned DR 5.5. After an anonymous complaint was filed with the Bureau of Code Enforcement Petitioners were instructed to seek zoning relief. There were no Protestants or interested citizens in attendance. Mr. Lyon testified that he constructed this ground level addition to his existing elevated deck. He testified that it occupies the same corner of their backyard that used to be occupied by an above-ground pool. He testified that his neighbors were all aware he was constructing this deck addition and that the

only neighbor that voiced any problem with it were his neighbors at 11 Schooner Bay Court and that they did not voice any objection until he had fully completed the job, which took him several months. He testified that he was unaware that he was unaware of the rear and side yard setback requirements until an anonymous Code complaint was filed and he received a Correction Notice and was then advised by the Zoning office that he needed to seek the variance relief that is the subject of this case. Mr. Lyon submitted an aerial photo of the deck and his surrounding neighbors. (Petitioners' Exhibit 2). He testified that the two neighbors whose yards are closest to the deck did not have any problem with the deck and that they do not oppose the requested variance relief. Letters from the owners of 7 Schooner Bay Court and 706 Carrollwood Road were admitted as Petitioners' Exhibits 3 and 4, respectively. The undersigned questioned Mr. Lyon about the comments from DPR concerning the 5' Drainage and Utility easement running along the rear of the property. I informed Mr. Lyon that I would confer with DPR to ascertain whether the deck addition was in fact impinging on the easement and that if it was he would need to remove that portion of the deck even if I granted the rest of the variance relief. He acknowledged this. I did then confer with DPR and after checking the GIS they confirmed that the deck was not actually impinging on the easement. They stated that they therefore did not object to the requested variance relief.

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 lot in question is relatively small in relation to the size of the home and the backyard

is long and narrow with the aforementioned Drainage and Utility easement along the rear property line. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be required to remove the ground level deck addition which they are using for family recreation in lieu of the above-ground pool that used to occupy that part of their yard. Based on the testimony and evidence I find that these minor variances 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, including that of their immediately adjoining neighbors, who both voiced support for the variance relief.

THEREFORE, IT IS ORDERED, this 21<sup>st</sup> day of **November, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Section 301.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit an open projection deck with a side yard setback of 0 ft. and rear yard setback of 2 ft. in lieu of the required 11.25 ft. setbacks, 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.

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

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Signed  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
For Baltimore County

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