

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(114 Delight Road)		
4 th Election District	*	OFFICE OF ADMINISTRATIVE
4 th Council District		
James Thomas and Alexandra Bethany	*	HEARINGS FOR
Crystal Day		
<i>Legal Owners</i>	*	BALTIMORE COUNTY
Petitioners	*	CASE NO. 2019-0523-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by James Thomas and Alexandra Bethany Crystal Day for property located at 114 Delight Road. The Petitioners are requesting variance relief from §§ 1B02.3.C.1, 400.1 and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) to permit an existing structure (shed) with a side yard setback of 0 inches in lieu of the required 30 inches; (2) to permit an existing 27x10 ft. attached addition with a side yard setback of 1 ft. in lieu of the required 15 ft.; (3) to permit an existing 27x10 ft. attached addition with a sum of the side yards of 23.9 ft. in lieu of the required 40 ft.; (4) to permit a one-story open 10x10 ft. porch/deck to extend into the side yard up to 100% in lieu of the minimum required depth of not more than 25%; and (5) to permit a one-story open 20x20 ft. porch/deck to extend into the side yard up to 100% in lieu of the minimum required depth of not more than 25% . A site plan was marked as Petitioners’ Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of December 16, 2019. On December 19, 2019, Administrative Law Judge Lawrence Stahl requested a hearing, based on an Affidavit in Support of Administrative Variance, Petitioner signed and affirmed that the subject property is not the subject of an active Code Enforcement case. However,

a Code Enforcement packet was contained in the case file. The hearing was held on Monday, February 3, 2020 at 10:00 AM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Petitioners, James and Alexandra Day appeared in support of the requested relief. Lawrence E. Schmidt, Esq. represented Petitioners. There were no protestants or interested citizens in attendance.

The subject property is approximately 1.09 acres and is zoned DR 2.

Based upon the testimony and evidence presented, I will grant the petition for variances.

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 necessitates 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).

Petitioners have met this test. The property is of a narrow and rectangular shape and slopes away from the residence. It is therefore unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because they would have to raze the structures that their builder has already constructed – albeit without the proper permits in place. Finally, I find that the variance 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 Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED, this **3rd** day of **February, 2020** by the Administrative Law Judge for Baltimore County, that the Petition for Variance from B.C.Z.R. §§ 1B02.3.C.1, 400.1 and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R) as follows: (1) to permit an

existing structure (shed) with a side yard setback of 0 inches in lieu of the required 30 inches; (2) to permit an existing 27x10 ft. attached addition with a side yard setback of 1 ft. in lieu of the required 15 ft.; (3) to permit an existing 27x10 ft. attached addition with a sum of the side yards of 23.9 ft. in lieu of the required 40 ft.; (4) to permit a one-story open 10x10 ft. porch/deck to extend into the side yard up to 100% in lieu of the minimum required depth of not more than 25%; and (5) to permit a one-story open 20x20 ft. porch/deck to extend into the side yard up to 100% in lieu of the minimum required depth of not more than 25% , 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.

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge for
Baltimore County

PMM:sln