

IN RE: PETITION FOR VARIANCE
NE side of Hillen Avenue, 90 feet S
of Fairmount Avenue
9th Election District
5th Councilmanic District
(333 Hillen Avenue)

Ryan Yaffe
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **CASE NO. 2009-0059-A**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Ryan Yaffe. Petitioner is requesting variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a replacement dwelling with a side yard setback of five feet in lieu of the minimum required 10 feet; a rear yard setback of 19 feet in lieu of the minimum required 50 feet; and a rear yard setback of 10 feet in lieu of the minimum required 37½ feet for a proposed open projection (porch). The subject property and requested relief are more fully depicted on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Petitioner Ryan Yaffe, and his father, Richard Yaffe. Stuart D. Kaplow, Esquire appeared and represented Petitioner. There were no Protestants or other interested persons in attendance at the hearing. The case was originally scheduled for October 14, 2008 at 2:00 PM. On that date, Petitioner and his attorney appeared. As a preliminary matter, the undersigned reviewed the file and determined that the property posting and publishing notice requirements had been met for the hearing, and that no Protestants or other interested persons attended the scheduled hearing. At that time, Petitioner’s attorney, Mr. Kaplow, requested a postponement. Mr. Kaplow explained that Petitioner was proceeding through the Design Review Panel (“DRP”) process and that the

project was scheduled to be heard before the DRP on November 12, 2008. The purpose of the postponement request was so Petitioner could have the comments and recommendations from the DRP concerning his project prior to the ensuing hearing on the petition for zoning relief. There being no interested parties in attendance at the hearing, the undersigned granted the request.

At the subsequent hearing on December 8, 2009, the testimony and evidence offered revealed that the subject property is a square-shaped property consisting of approximately 5,170 square feet or 0.119 acre, more or less, zoned D.R.10.5. The property is located on the north side of Hillen Avenue, east of York Road in the East Towson area of Baltimore County. Specifically, the property is situated near the northeast corner of Hillen Avenue and Fairmount Avenue. Hillen Avenue is actually East Towsontown Boulevard and becomes Hillen Avenue at the intersection with Aigburth Avenue to the south and Fairmount Avenue to the north.

Mr. Kaplow proffered that the existing dwelling on the site is very old and in a state of disrepair. The structure is vacant and deteriorating and the property is overgrown. Petitioner recently purchased the subject property and desires to raze the existing structure and replace it with a two-story single-family dwelling with a full covered front porch, a side loading two car garage, and a ground level open projection porch attached to the rear of the home. Mr. Kaplow also indicated that Petitioner plans to redevelop this property for the purpose of residing in the newly constructed home. In order to follow through with the planned improvements, Petitioner is in need of variance relief from the side yard, rear yard, and open projection setback requirements contained in the B.C.Z.R.

Further evidence revealed that, following the initial postponement of the instant zoning hearing, Petitioner came before a meeting of the DRP on November 12, 2008. The DRP is chaired by Mr. William Monk. A copy of the Meeting Minutes of the DRP was marked and

accepted into evidence as Petitioner's Exhibit 2. At the meeting, Petitioner presented his plan for the property and received comments from the DRP panel members and from Michael Gerding representing the nearby Towson Manor Village Community Association. Following discussion on the project, the DRP approved the project with several conditions. These conditions included revising the front porch railing height, constructing steps to grade off the rear porch if needed, adding first floor windows to the east elevation, adding windows to the west elevation that line up with the garage doors, and revising the front elevation to show grading and steps. As a result of the DRP meeting, the Chairman, Mr. Monk, revised the site drawing slightly for the proposed new house. As shown on the drawing that was marked and accepted into evidence as Petitioner's Exhibit 3, this results in the rear yard setback for the open projection to be five feet instead of the requested 10 feet. As such, Mr. Kaplow made an oral motion to amend the Petition to reflect this change in the dimensions for the open projection porch. There being no opposition to the motion and finding that the motion did not alter the nature or character of the original petition for zoning relief, the undersigned granted the motion to amend.

In support of the variance requests, Mr. Kaplow advised that the location of the property and age of the property and associated dwelling, as well as the size of the lot, are what drive the need for the variance relief. The property is located in the historic district of East Towson, and the existing dwelling -- though not historically significant -- dates back to the early 1900's.¹ In addition, the existing footprint of the dwelling is non-conforming as to the current setback requirements and predates the zoning regulations. Moreover, the lot itself is only 59.56 feet deep, hence it would be impossible to satisfy the minimum 50 foot rear setback requirement. It is also noteworthy that the East Towson area is undergoing redevelopment similar to that which

¹ The property in question is listed on the Baltimore County Inventory CI #1150 (MIHP #BA-1150). As a consequence, a demolition request preceded this zoning relief request, and was reviewed and approved by the Landmarks Preservation Commission ("LPC") on July 10, 2008.

is proposed by Petitioner. Although some of the older homes still remain, others in the area have been razed and replaced with newer dwellings. For example, tax records indicate that the home at 337 Hillen Avenue immediately next door to the subject property was constructed in 1999, and the home at 343 Hillen Avenue was constructed in 2003.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments received from the Office of Planning dated October 1, 2008 indicated that while the size and configuration of the lot limit the design choices, the new dwelling should, to the greatest extent possible, replicate the scale of the former house and incorporate some of the community's prevalent architectural elements into the project. Additionally, the new dwelling should conform to the design guidelines set forth in the East Towson Design Standards.

Considering of all the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. In particular, the property is located in the East Towson Historic District and the existing dwelling is approximately 100 years old and in a severe state of disrepair. As evidenced by the Landmarks Preservation Commission's approval of a demolition request, it is clear that the existing home is need of replacement. Petitioner has appeared before the Design Review Panel and has received their approval of the project, subject to certain conditions. In addition, the age of the existing dwelling predates the zoning regulations and is currently nonconforming. Clearly, any replacement dwelling could not meet all the setback requirements of the current zoning regulations. Hence, I find that the imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district.

Finally, based on the evidence presented by Petitioner -- particularly the elevation drawings and renderings contained in Petitioner's Exhibit 3, and based on the Meeting Minutes and approval granted by the DRP as indicated in Petitioner's Exhibit 2, I find the variance requests can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioner, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 10th day of December, 2008 by this Deputy Zoning Commissioner, that Petitioner's variance relief requests from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a replacement dwelling with a side yard setback of five feet in lieu of the minimum required 10 feet; a rear yard setback of 19 feet in lieu of the minimum required 50 feet; and a rear yard setback of five feet in lieu of the minimum required 37½ feet for a proposed open projection (porch) be and are hereby GRANTED. The relief granted herein shall be subject to the following:

1. Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Although the size and configuration of the lot limit the design choices, the new dwelling should, to the greatest extent possible, replicate the scale of the former house and incorporate some of the community's prevalent architectural elements into the project.
3. The new replacement dwelling shall be constructed in a manner that is consistent with the approval granted and conditions stated by the Design Review Panel in the Meeting Minutes accepted into evidence as Petitioner's Exhibit 2, and the site plan, elevation drawings and renderings accepted into evidence as Petitioner's Exhibit 3.

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

 SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz