

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
NE side of Westchester Avenue, 270 feet NW	*	DEPUTY ZONING
of Hollow Road and Westchester Avenue		
1 st Election District	*	COMMISSIONER
1 st Councilmanic District		
(2606 Westchester Avenue)	*	FOR BALTIMORE COUNTY
Curt Cashour	*	
<i>Petitioner</i>		
	*	Case No. 2009-0073-SPHA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the legal owner of the subject property, Curt Cashour. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a wood deck addition on the right side of the house and other existing additions to a nonconforming structure which exceed 25% of the existing dwelling area. Petitioner is also requesting Variance relief from Section 1B02.3.c.1 of the B.C.Z.R. to allow an 8 foot left side setback in lieu of the required 15 feet and a 9 foot right side setback in lieu of the required 11.25 feet for a total of 17 feet in lieu of 26.25 feet, and to allow a 4 foot front setback in lieu of the required 40 feet. The subject property and requested relief are more fully described 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 requested relief was Petitioner Curt Cashour. Also appearing in support of the requested relief was Brenda Young. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence presented revealed that the subject property is an irregular-shaped property consisting of approximately 7,372 square feet or 0.17 acre, more or less, zoned D.R.2. The property is located near the Baltimore County/Howard County line on the north side of Westchester Avenue, east of Ellicott City and west of Hollow Road, in the historic Oella area of Baltimore County. The property is improved with an existing two-story single-family dwelling. Petitioner acquired the property in 1999 as a duplex and has since made significant improvements to the dwelling, including interior renovations and a two-story garage addition to the left side of the property, an addition to the rear of the property, and replacement of the covered front porch area. At this juncture, Petitioner is in need of variance relief because he desires to add a deck to the right side of the property, as well as to legitimize the setbacks for the now existing garage addition and covered front porch.¹ The special hearing is to permit the new deck, which -- with the existing additions to the original nonconforming structure -- would extend beyond the maximum 25% of the ground floor area of the structure as set forth in Section 104.3 of the B.C.Z.R.

In support of the requested special hearing, Petitioner indicated that when he acquired the property 10 years ago, the dwelling was not in very good shape and was very small. A photograph of the property when he acquired it was marked and accepted into evidence as Petitioner's Exhibit 3. He noted that the dwelling was constructed in 1875. It had only two small bedrooms with low seven foot ceilings and very little space. Over the years, Petitioner has

¹ Petitioner indicated that when he decided to construct the garage addition several years ago, he requested an Administrative Variance for that addition and the addition to the rear of the home. It was anticipated that the side yard setback would be 12 feet and Petitioner was granted variance relief for those structures in Case No. 2007-0061-A; however, as it turned out, the side yard setback actually became 8 feet. In addition, Petitioner indicated the home originally had a covered front porch that was in disrepair and, due to its size and configuration, did not fit with the dwelling once it was converted from a duplex with two front doors to a single-family home with one front door. As a result, Petitioner replaced the porch; however, in moving the location of the home's front door, the location of the front porch also changed such that it became approximately one foot closer to the road than before. Petitioner indicated he was unaware he needed zoning relief to replace the front porch that existed previously.

endeavored to improve the size and appearance of the dwelling, while at the same time not overcrowding the irregular-shaped lot. Most of the exterior improvements have been completed (except for the proposed new deck) and the interior improvements are ongoing. A photograph of the property since the garage and rear additions were constructed was marked and accepted into evidence as Petitioner's Exhibit 4. In order to balance the appearance of the home and provide additional useful space, Petitioner desires to add the deck along the right side of the dwelling. This would allow access to this side of the home and provide an area for Petitioner to enjoy the outdoors of the property. The original nonconforming dwelling was so small, practically any additional improvements would trigger the 25% maximum allowed. The newer photograph with the existing improvements shows a very attractive structure that appears to blend the character of the old style with the benefit of today's building materials.

In support of the variance requests, Petitioner indicated that the placement of the dwelling as well as the size and shape of his property drives the need for the setback relief. In viewing the zoning maps that were marked and accepted into evidence as Petitioner's Exhibits 2A and 2B, and the aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 5, it is shown that the location of other homes on Westchester Avenue and other nearby streets varies; indeed, some are set back far from the road and others are located very close to the road. In the instant matter, Petitioner's home when built over 100 years ago was placed very close to the street.

As depicted on the site plan, it was also placed on property that has a very unusual shape. The front property line is approximately twice as wide as the rear property line, and the western property line is angled inward and is approximately 1½ times longer than the eastern property line. These odd angles and constraints have made it difficult for Petitioner to make the needed

improvements to the property and result in the need for the instant variance requests. For example, prior to Petitioner replacing the covered front porch, the porch that existed was approximately 5 feet from the road, far less than the 40 feet required by the current Zoning Regulations. The concrete was deteriorated and the covered roof was unattractive. The replacement porch is actually smaller in size than the prior porch, but leaves a front setback of 4 feet rather than the required 40 feet. It should also be noted that the new deck would be approximately 25-30 feet deep by 12 feet wide and be elevated about 5-6 feet.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief. A letter dated October 24, 2008 was received by the Zoning Review Office from Craig E. Close of 15 Benway Court, located south of the subject property. Mr. Close indicated that he does not agree with a variance request that requires a 40 foot setback to be to within 5 (or less) feet from the road.

Turning first to the Petition for Special Hearing, I am persuaded to grant the requested relief. In my view, the significant improvements Petitioner has made and continues to make to the dwelling enhances the appeal and aesthetics of the property and the surrounding area. Looking at the “before” and “after” photographs of the dwelling further illustrates that point. Although the new deck will add ground floor area to the nonconforming dwelling, I believe this new structure will have a benign appearance overall and have very little impact on the property.

As to the variance request, considering all of the testimony and evidence presented, I am convinced that the requests should be granted. First, 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 shape and configuration of the property is what drives the need for the variance

relief. The irregular shape of the subject property is unlike others in the surrounding community. In fact, most of the properties in this area are rather dissimilar in terms of shape and square footage. The left side yard variance and the front yard variance requests are to correct existing conditions on the property. The right side yard variance request is to enable Petitioner to erect a deck along that side of the property. The odd angles of the property lines vis-à-vis the location of the dwelling thereon limit the opportunity for Petitioner to make much needed improvements to the property and cause the setback requirements to have a disproportionate impact on the subject property. Hence, I find the property to be unique in a zoning sense.²

I further find that these 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. Reference is made to a letter of support that was marked and accepted into evidence as Petitioner's Exhibit 7, which indicates that the adjacent neighbors to the immediate right of Petitioner's property -- on the same side where the deck is proposed -- have no objection to the construction of the deck.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 3rd day of March, 2009 that Petitioner's Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a wood deck

² It should also be noted that Petitioner essentially addressed the left side yard setback issue last year when he sent a letter to the Zoning Review Office indicating that the side yard setback was actually 8 feet and not the 12 feet as requested in his Administrative Variance request and granted in Case No. 2007-0061-A. He received a reply to his letter from the Zoning Review Office dated June 16, 2008 indicating his revised setback was within the spirit and intent of the previous decision. A copy of that letter was marked and accepted into evidence as Petitioner's Exhibit 6.

addition on the right side of the house and other existing additions to a nonconforming structure which exceed 25% of existing dwelling area be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's variance relief requests from Section 1B02.3.c.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an 8 foot left side setback in lieu of the required 15 feet and a 9 foot right side setback in lieu of the required 11.25 feet for a total of 17 feet in lieu of 26.25 feet, and to allow a 4 foot front setback in lieu of the required 40 feet be and are hereby GRANTED, subject to the following:

1. Petitioner is advised that he may apply for any required building permits 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 the 30-day appeal period from the date of 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.

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