

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W side of Hamilton Avenue, 248 feet N		
of the c/l of Price Road	*	DEPUTY ZONING
14 th Election District		
7 th Councilmanic District	*	COMMISSIONER
(5707 Hamilton Avenue)		
	*	FOR BALTIMORE COUNTY
Russell Beard, Jr.		
<i>Petitioner</i>	*	CASE NO. 2009-0266-A

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IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W side of Hamilton Avenue, 199 feet N		
of the c/l of Price Road	*	DEPUTY ZONING
14 th Election District		
7 th Councilmanic District	*	COMMISSIONER
(5711 Hamilton Avenue)		
	*	FOR BALTIMORE COUNTY
Russell Beard, Jr.		
<i>Petitioners</i>	*	CASE NO. 2009-0267-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before this Deputy Zoning Commissioner for consideration of Petitions for Variance filed by the legal property owner, Russell Beard, Jr. In each case number, Petitioner is requesting the following variance relief:

Case No. 2009-0266-A: For the property located at 5707 Hamilton Avenue, the variance request is from Sections 1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing dwelling to have a side yard setback of 7.1 feet and a front yard setback of 21.2 feet in lieu of the required 10 feet and front yard average of 29 feet.

Case No. 2009-0267-A: For the property located at 5711 Hamilton Avenue, the variance request is from Sections 1B02.3.C.1 and 400.1 of the B.C.Z.R. to permit an existing dwelling to have side yard setbacks of 7.07 feet and 6.8 feet in lieu of the required 10 feet each; and to permit an

existing detached accessory structure (garage) to have a side setback as close as 1 foot in lieu of the required 2 ½ feet. The subject properties at 5707 Hamilton Avenue and 5711 Hamilton Avenue and the requested relief are more fully described on the site plans which were marked and accepted into evidence as Petitioner's Exhibits 1A and 1B, respectively.

Appearing at the requisite public hearing in support of the variance requests was Petitioner Russell Beard, Jr. and his attorney, Linwood O. Jarrell, Jr., Esquire. Also appearing in support of the requested relief was Bernadette Moskunas with Site Rite Surveying, Inc., the land surveying firm that prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the properties that make up 5707 Hamilton Avenue (Case No. 2009-0266-A) and 5711 Hamilton Avenue (Case No. 2009-0267-A) are each irregular in size and zoned D.R.5.5. The properties, shown on the site plans as Lot 1 (0.372 acre) and Lot 2 (0.377 acre), respectively, are located on the west side of Hamilton Avenue, just north of Price Lane and southeast of Interstate 95 and approximately one mile east of the City/County line, in the Rosedale area of Baltimore County. The location and general appearance of the properties is also confirmed in the aerial photographs that were marked and accepted into evidence as Petitioner's Exhibits 2A and 2B. The property at 5707 Hamilton Avenue is improved with an existing two-story frame dwelling that was built in 1905 according to the SDAT printout that was marked and accepted into evidence as Petitioner's Exhibit 3A. The property is also improved with a 10 foot wide asphalt driveway that leads to a large parking area to the rear of the property. The property at 5711 Hamilton Avenue is also improved with an existing one-story brick rancher style dwelling that was built in 1949 according to the SDAT printout that was marked and accepted into evidence as Petitioner's Exhibit 3B. The property is

also improved with an existing carport and one-story brick garage located in the rear of the property near the southern property line, as well as an asphalt driveway and parking area leading to the carport and garage.

According to Mr. Jarrell, Petitioner's attorney and the family attorney for many years, Petitioner acquired the properties from his mother's estate in 1995. His parents bought the property in 1953 and there has been no change in the exterior property lines. Ms. Moskuna, Petitioner's property and land use consultant, indicated that none of the properties is part of a subdivision. In addition, the properties do not have a legally recognized interior lot line. The purpose of the instant filings is to legitimize long existing conditions and in particular to recognize the existing improvements which are to remain. In addition, Petitioner is proceeding through the "minor subdivision" process with the County in order to establish the interior lot line between Lots 1 and 2 as shown on the site plans. In so doing, Petitioner also desires to "clean up" any zoning issues that have arisen on the properties during this process to bring them into compliance with today's standards. That includes the location and placement of the dwelling at 5707 Hamilton Avenue, which requires variance relief from the side and front yard setbacks, and the location and placement of the dwelling at 5711 Hamilton Avenue, which requires variance relief from the side yard setback, and of the garage which also requires variance relief from the side yard setback. Ms. Moskun's also noted that all other regulations are met, including minimum area requirements, and there are no other improvements noted or contemplated.

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.

Considering of all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. Ms. Moskunas pointed out that neither of the lots is part of a subdivision and each is of a varying shape and size. Although they are considered separate lots, as illustrated in the SDAT printouts with distinct legal descriptions and separate tax bills, evidently, the properties do not have a recognized interior lot line (which is the purpose behind the proposed minor subdivision). Moreover, the property itself and the improvements thereon pre-date the adoption of the Zoning Regulations. Because of these unique features, the imposition of zoning on the property disproportionably impacts the subject lots as compared to other properties in the zoning district.

Finally, I find 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. The relief requested herein will serve to merely legitimize existing condition that date back many years, and there were no interested citizens protesting the requested relief.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions 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 30th day of June, 2009 by this Deputy Zoning Commissioner, that Petitioner's variance relief requests for the properties set forth as follows:

Case No. 2009-0266-A: For the property located at 5707 Hamilton Avenue, the variance request from Sections 1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing dwelling to have a side yard setback of 7.1 feet and a front yard

setback of 21.2 feet in lieu of the required 10 feet and front yard average of 29 feet be and are hereby GRANTED; and

Case No. 2009-0267-A: For the property located at 5711 Hamilton Avenue, the variance request from Sections 1B02.3.C.1 and 400.1 of the B.C.Z.R. to permit an existing dwelling to have side yard setbacks of 7.07 feet and 6.8 feet in lieu of the required 10 feet each; and to permit an existing detached accessory structure (garage) to have a side setback as close as 1 foot in lieu of the required 2 ½ feet be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for his 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 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.

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

ORIGINAL SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz