

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
E side of Bellona Avenue, 550 feet S of the		
c/l of Midhurst Road	*	DEPUTY ZONING
9 th Election District		
5 th Councilmanic District	*	COMMISSIONER
(6303 Bellona Avenue)		
	*	FOR BALTIMORE COUNTY
Jason and Lisa Manuel		
<i>Petitioners</i>	*	Case No. 2009-0274-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Administrative Variance filed by Jason and Lisa Manuel, the legal property owners, for property located at 6303 Bellona Avenue. The Variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed addition to have a side yard setback of 5 feet in lieu of the minimum required 10 feet. The subject property and requested relief are more particularly described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of May 11, 2009. On May 8, 2009, Nancy Maronick, President of the Bellona-Gittings Community Association, filed a Formal Demand for Hearing. The hearing was subsequently scheduled for Thursday, June 4, 2009 at 9:00 AM in Room 106 of the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland. In addition, a sign was posted at the property on May 19, 2009 and an advertisement was timely published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

Appearing at the public hearing in support of the requested relief was Petitioner Jason Manuel. Also appearing in support was Sharon Stockfield of 6305 Bellona Avenue. Appearing as

Protestants were Nancy Maronick of 5911 Charlesmead Avenue, President of the Bellona-Gittings Community Association who filed the formal demand for hearing, and Stephany Harper of 6405 Pinehurst Road.

Testimony and evidence offered revealed that the subject property is rectangular in shape, though is somewhat diagonal on its frontage at Bellona Avenue. At the outset, it should be noted that the property is very unusual in that it lies in both Baltimore County and Baltimore City. As depicted on the site plan, the small portion of the property that is the subject of the instant variance request contains approximately 2,352 square feet zoned D.R.3.5 and is located on the north side of the property in Baltimore County. The remainder of the property contains approximately 7,649 square feet and is located in Baltimore City. The property is improved with an existing brick two-story single-family dwelling, all of which is located in the “City” portion of the property. There is a single lane driveway running along the southern property line to a garage located at the rear of the property, also located in the City. A zoning map that was marked and accepted into evidence as Petitioner’s Exhibit 2 confirms the unusual geography of the property vis-à-vis the improvements thereon.

The Pinehurst subdivision where Petitioner’s property is located is truly one of the classic, older Baltimore County/Baltimore City neighborhoods situated between Charles Street and York Road and north of Lake Avenue. The age of the homes span from the late 19th century through the early 20th century, into the 1940’s. Most of the homes have kept their traditional character and are well maintained. As indicated in the SDAT data search that was marked and accepted into evidence as Petitioner’s Exhibit 6, Petitioner’s home was built in 1937. Photographs of the home were marked and accepted into evidence as Petitioner’s Exhibits 3A and 3B. Petitioner and his wife have owned the subject property for the past three years. At this juncture, they desire to

construct a sunroom to the north side of their home measuring approximately 10 feet wide by 25 feet deep. This addition would necessitate a five foot encroachment into the 10 foot side yard setback required in the D.R.3.5 Zone; hence the instant request for variance relief.

In support of the requested relief, Petitioner referred to the two photographs of his home (Petitioner's Exhibits 3A and 3B) and photographs of his next door neighbors' properties that were marked and accepted into evidence as Petitioner's Exhibits 3C and 3D, respectively. The side yard on the north side of the property as shown in Petitioner's Exhibit 3C is the location of the proposed sunroom. Petitioner also referred to the affidavit that accompanied the Petition, which was marked and accepted into evidence as Petitioner's Exhibit 4. In the affidavit, Petitioner and his wife indicate that there is essentially no other practical location for the sunroom. Locating the sunroom on the south side of the home would interfere with the existing driveway leading to the garage, and locating the sunroom off the back of the home would be infeasible due to a basement stairwell. Petitioner also points out that his lot is unique compared with other lots in his neighborhood surrounding Bellona Avenue, Midhurst Road, and Blenheim Road in that his lot is smaller than most others. As a result, unlike almost every other home in the neighborhood that has a sunroom-type addition to the side of the home, Petitioner is unable to construct a similar improvement due to the size of his lot. By way of illustration, Petitioner submitted 19 photographs that were marked and accepted into evidence as Petitioner's Exhibits 5A through 5S. These photographs were taken by Petitioner during a "walk around" of his neighborhood and confirm that just about every home has an additional side room.

Also testifying in support of the variance request was Sharon Stockfield, who has lived next door adjacent to the north side of Petitioner's property for approximately 20 years. Ms. Stockfield indicated that the subject property was owned for many years by Ms. Marie Cox and

her husband. During those prior years, there was an open patio/porch with railings in the area where Petitioner now desires to add the sunroom. There is a door that leads from this side of the home to the outside. After the death of Ms. Cox's husband about 15 years ago, Ms. Cox had the porch removed and had a small portico constructed above the doorway. This area where the porch existed now consists of grass and landscaping and Petitioner desires to construct the sunroom in this location. Ms. Stockfield indicated she has been impressed with work that Petitioner has put into his home and the improvements that have been made. She believes the proposed sunroom on the side of the property facing her property would have no negative impacts and does not oppose Petitioner's variance request.

Testifying in opposition to the requested relief was Nancy Maronick, President of the Bellona-Gittings Community Association (the "Association"), and Stephany Harper, who is on the Board of the Association and Zoning Chairperson. Ms. Maronick and Ms. Harper indicated that the Association is committed to preserving the zoning codes in their neighborhood in order to maintain the architectural appearances and property values in their community. They are very concerned about Petitioner's request to alter the existing setback restrictions and the precedent that granting such a request might set. They believe there are few, if any, circumstances where the setbacks should be altered in their neighborhood. They also stressed that their Association's decision to request a formal hearing and oppose the variance request is not personal to Petitioners, and that in order to maintain their impartiality in these types of matters, they would likely oppose any request involving encroachment into setbacks in their community.

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.

I am certainly mindful of the testimony put forth by Protestants, and I believe their stated concern about the setbacks in their community being maintained is both understandable and legitimate. But after considering all the testimony and evidence presented in this case, I am persuaded to grant the variance request in this particular instance. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The subject property is located both in the City and the County. As a result, I find it very unusual that Petitioner essentially has to abide by two separate sets of zoning codes for his property. As shown on the SDAT Data Search printouts, Petitioner also has two tax bills -- one for the City and one for the County. Therefore I find the property unique in a zoning sense. I also find that the setback restrictions in this case disproportionately impact Petitioner's property as compared to others in the district. Here, it is evident that almost every other property in Petitioner's neighborhood has a side room (or enclosed porch or sunroom) off the main area of the dwelling. I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. Indeed, Petitioner desires a similar improvement to his property, but is denied that opportunity as a result of the size of the lot and the location of his home closer to the north side of the lot than the south side, which was built prior to the imposition of zoning on the property.

Finally, I find this variance 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. Obviously, one of the primary goals of the side yard setback regulations is to provide adequate spacing between adjacent properties and create a degree of uniformity in the layout of communities. However, in this instance, I note that the adjacent property to the south at 6301 Bellona Avenue, which was built in 1927 according to SDAT Data records, is eight feet

from the property line rather than the required 10 feet, according to Petitioner's site plan. This is likely due to the fact that the home was constructed well prior to the adoption of zoning regulations in this area. This two foot encroachment into the setback has very little, if any, impact on Petitioner's neighboring property because Petitioner's side yard area plus the width of his driveway running along that side of the property measures 22 feet to the property line, creating a substantial distance of 30 feet between the homes. In that same vein, when Petitioner's sunroom is constructed, there will be a five foot setback to his northern property line. There is currently a side sunroom and driveway on the south side of Ms. Stockfield's property adjacent to Petitioner's property with a distance from the sunroom to her property line of 21 feet. This will create an acceptable distance between the homes of 26 feet, which I believe is within the spirit and intent of the setback regulations.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 5th day of June, 2009, that the Administrative Variance request from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed addition to have a side yard setback of 5 feet in lieu of the minimum required 10 feet be and is hereby GRANTED, subject to the following:

1. Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners 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