

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
S/S Elinor Avenue, 300' E c/line of		
Lyndale Avenue	*	ZONING COMMISSIONER
<b>(323 Elinor Avenue)</b>		
14 <sup>th</sup> Election District	*	OF
6 <sup>h</sup> Council District		
	*	BALTIMORE COUNTY
John J. Wamhoff, III		
Petitioner	*	<b>Case No. 2010-0037-A</b>

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, John J. Wamhoff, III. The Petitioner seeks relief from Sections 1B01.2.3.A.1 and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing deck, pool and shed addition(s) with a rear setback of zero (0) feet in lieu of the required 22.5 feet and to have 42% rear yard coverage in lieu of the permitted 35% (per the 1953-1955 Zoning Regulations [Section 400.1]). The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request was John J. Wamhoff, III, property owner. James W. Holderness, Esquire appeared on behalf of Laurie A. Neary, a concerned property owner whose rear yard abuts with that of the Petitioner. There were no other interested persons present, however, it is to be noted that two (2) letters of support were received from adjacent side yard property owners namely; Frank and Lorraine Cimino (325 Elinor Avenue) and Michelle Curley, Paul Molton and Family (321 Elinor Avenue). The matter came before me as the result of a complaint registered by Mr. Robert Vick with the Code Enforcement Division of the Department of Permits and Development Management (DPDM) relative to the new deck addition in the rear yard. The Petitioner was issued a Correction Notice to obtain a building permit and advised to file the instant Petition to resolve the matter.

Testimony and evidence offered disclosed that the subject property is a narrow rectangular shaped parcel (37' wide x 132' deep) located on the south side of Elinor Avenue just east of Sippel Avenue in the Nottingham area of the County. The property, known as Lot 5 in the Linover Heights subdivision has been owned by the Petitioner since 1997, contains an area of 4,270 square feet, zoned D.R.5.5 and improved with a two-story, semi-detached single-family dwelling built in 1957. The Petitioner and his three (3) children (now ages 11 through 14) desiring recreational use of the rear yard added a shed (11' x 13'-5") for storage and swimming pool. Later, a deck was added surrounding the pool (24' x 41') and hot tub as illustrated on the site plan. Unbeknownst to Mr. Wamhoff, constructing these improvements and annexing them by decking to the rear of the home created a "technical" setback problem in that the pool is now considered attached to the dwelling, and must be set back a minimum distance of 22.5 feet from the rear property line that abuts Ms. Neary's rear yard. Additionally, the many photographs of the decking and amenity structures reviewed during the hearing evidence that all work, while pervious in nature and of high quality, now overlays 42% of the rear yard's surface rather than the permitted 35% per the 1953-1955 zoning regulations.<sup>1</sup> Finally, the Petitioner submitted into evidence collectively as Exhibit 3 the written statements from his adjacent neighbors stating that they have no objections to the decking, above ground pool or hot tub improvements.

As to Ms. Neary, her attorney, James Holderness, indicated the major issue related to the encroachment of the Petitioner's pool decking extending over the shared rear yard property line. He presented a location survey prepared by the Ruxton Design Corporation demonstrating this contention. Additionally, Ms. Neary believes that a mosquito problem in the immediate area is related to water that drips through the decking and lies on the ground. As discussed at the hearing, the jurisdiction of the Zoning Commissioner for Baltimore County is limited as to that set forth in statute. I cannot determine the ownership of real property as that determination is vested solely in the Circuit Court. Accordingly, and with the concurrence of the parties, the

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<sup>1</sup> B.C.Z.R. Section 103 provides the regulations in this case are those in effect at the time the subdivision was originally submitted to the Baltimore County Planning Commission in 1954.

record of the case was left open to enable time to reach agreement on these open issues relative to the properties. The result of these efforts culminated in a written agreement, dated November 4, 2009, which enabled these neighbors to agree on a satisfactory resolution. The parties have stipulated to the following terms:

- Wamhoff and Neary both agree to the removal of the fence at the rear of each of the referenced properties.
- Wamhoff agrees that Neary or anyone she designates may inspect underneath his existing deck for standing water. If standing water is found, Wamhoff agrees to take steps to rectify the problem.
- Wamhoff and Neary agree to have their properties treated every year for mosquitoes and more often, if necessary.
- Wamhoff acknowledges that the existing deck, constructed without a permit, encroaches on Neary's property by one (1) foot as evidenced by the Location Drawing, dated October 4, 1996. Wamhoff agrees to pay Neary an annual sum of \$.01 for the use of her land. In exchange, Neary agrees to allow existing deck to remain on her property for a period of five (5) years from the date of this agreement or upon the sale of either property, whichever occurs sooner.
- In the event that Neary decides to list her property for sale before the five (5) year period has expired and any potential buyers do not concur with this agreement, Wamhoff agrees to have the existing deck moved back three and one half (3-½) feet from its existing location so that it is two and one half (2-½) feet off the property line, pursuant to zoning regulation.
- Wamhoff agrees that Neary may change the appearance of the portion of the deck that is on her property as long as the portion of the deck facing Wamhoff's property remains unaffected. Wamhoff further agrees to remove plywood partition from the bottom of the deck and replace it with latticework or a similar aesthetically pleasing material.
- This agreement may be extended by mutual consent of both parties.
- This agreement constitutes the first and final agreement between the parties and resolves all property disputes between the parties.

After due consideration of the evidence and testimony presented, I am persuaded that the Petitioner has met the spirit and intent of Section 307.1 of the B.C.Z.R. for relief to be granted. There were no adverse comments submitted by any County reviewing agency and as noted above, the owners of the affected rear and adjacent side yard properties have no objection. The Office of Planning, in its Zoning Advisory Committee (ZAC) comment, recommends that the Petitioner provide screening in the form of a privacy fence in addition to landscaping to mitigate any adverse impacts to adjacent residences caused by the existing pool deck being located so close to the rear property line. The parties' agreement, however, provides for the eventual movement of the decking back 2-½ feet off the property line and latticework added to the rear of the deck. Finally, it is clear that strict compliance with the B.C.Z.R. would result in a practical difficulty and/or unreasonable hardship upon the Petitioner and require the demolition of existing additions. For all of these reasons, I am persuaded to grant the variance.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 17<sup>th</sup> day of November 2009 that the Petition for Variance seeking relief from Sections 1B01.2.3.A.1 and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing deck, pool and shed addition with a rear setback of zero (0) feet in lieu of the required 22.5 feet and to have 42% rear coverage in lieu of the permitted 35% per the 1953-1955 Zoning Regulations (Section 400.1), in accordance with Petitioner's Exhibit 1, be and are hereby GRANTED, subject to the following conditions:

1. The 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.

2. The provisions, conditions, terms and limitations of the Agreement by and between John J. Wamhoff, III and Laurie A. Neary, dated November 4, 2009, encumbering the subject property and uses thereon, are hereby incorporated into and made a material part of the approval granted.
3. There shall be no additional structural improvements permitted at this site that would result in a building footprint expansion without a public hearing and obtaining requisite permits.
4. The Petitioner shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management (DPDM) reasonable access to the subject additions on the property to ensure compliance with this Order.
5. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision shall be entered within thirty (30) days of the date hereof.

WJW:dlw

\_\_\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County