

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E/S Elizabeth Avenue, 182' S of c/line of Smith Avenue	*	ZONING COMMISSIONER
(3201 Elizabeth Avenue)	*	OF
13 th Election District	*	BALTIMORE COUNTY
1 st Council District	*	
Joyce M. Miller	*	Case No. 2010-0097-A
Petitioner		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Joyce Mae Miller. The Petition was filed in response to a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management (DPDM) relative to the use of the subject property. In this regard, the Petitioner requests a variance from Sections 1B02.3.A.5, 1B02.3B, and 301.1A of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an open projection (open porch with roof) with a zero (0) foot side yard setback in lieu of the minimum required 7.5 feet. 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 were Joyce M. Miller, property owner, and her builder, Greg Wampler, of Wampler and Sons. Appearing in opposition to the request was Peter T. Diemer, an adjacent property owner residing at 3203 Elizabeth Avenue.

Testimony and evidence offered disclosed that the subject property is a rectangular shaped parcel located on the east side of Elizabeth Avenue just south of Marbourne Avenue in Halethorpe. The property, recognized as Lots 41 and 42 in the subdivision known as West Baltimore, is 50' wide x 145' deep containing a gross area of 7,200 square feet, more or less,

zoned D.R.5.5. The property is improved with a one-story, single-family dwelling built in 1954. At issue in this case is an attached open porch constructed by the Petitioner on the southeast side of her home measuring 11' x 11' in size¹. This open projection porch constructed some 13 years ago was remodeled in June 2009 by Wampler and Sons, a licensed contractor, who added a roof to allow for the enhanced use of the porch shielding the Petitioner from falling leaves, rain and snow.

By way of background, the Petitioner and her deceased husband purchased the property in 1965. The property has been kept in good order and repair as Ms. Miller testified [inside and out]. The porch was placed over a 23-year-old concrete patio of the same size and location. That is to say, the concrete patio extended from the south side of the house to the common boundary line with Lot 43. The porch had never been a problem with the then property owners of 3203 Elizabeth Avenue, Mr. and Mrs. Louis Appel. Following the Appels' death, Peter Diemer purchased the property (June 2003) and never voiced a concern or complaint concerning the porch. As noted above, the Petitioner decided early in 2009 that she would add a roof over the porch and update its overall appearance. In this regard, Ms. Miller hired her contractor who unfortunately ended up with the roof overhanging the property line by 4 to 6 inches. Little did the Petitioner realize, at that time, that the covered porch would become complicated by Sections 1B02.3C and 301.1A of the B.C.Z.R. requiring a 7.5 foot minimum width side yard setback.

The Petitioner's nightmare began in September 2009 when the Department of Permits and Development Management (DPDM), the agency that issues building permits, received an inquiry questioning the structure's setback distance from the common property line. Code Enforcement Officer Ron Turner visited the site and issued a "Correction Notice" informing

¹ A porch such as this and shown on the photographic exhibits submitted as Petitioner's Exhibits 2 and 3 is a reasonable accessory use to a residence. See, *Belvoire Farms v. North*, 355 Md. 259 (1999) and *White v. North*, 356 Md. 31 (1999).

Petitioner that she would need to bring the property in conformance with the zoning regulations. In any event, the work was finished at this time and the Petitioner had paid substantial sums of money. She asserts that she is up in her years, is now unemployed with health problems and physical limitations. The porch has existed at its present location for over a decade and provides her with a place while recovering from surgeries. The Petitioner now comes before me seeking relief as set forth above to allow the existing structure with a zero (0) foot setback. Ms. Miller testified at length as to the practical difficulty and unreasonable hardship she has endured since receiving the Correction Notice, which has left her in an untenable position. Despite discussions with Mr. Diemer, who has no problem with Ms. Miller's use of the porch - he raises concerns about open space between the properties and how a subsequent purchaser of the Miller property might use the porch, which is right next to his house. Mr. Diemer believes that the roof of the porch is over the common property line by 8 inches.

Ms. Miller testified that she placed the porch in its present location for the reasons indicated above and was not aware of any County restriction that would prevent her from doing so. To a certain extent, I am sympathetic to Ms. Miller's plight. A search of the Zoning Commissioner's records fails to disclose any variances applied for or granted for similar relief in this area. If other porches or accessory structures in the West Baltimore subdivision have been erected over time, they have done so in disregard of the zoning regulations. Variance relief can be granted only if the requirements contained in Section 307 of the B.C.Z.R. are met. This section states that the Zoning Commissioner may grant variances;

... only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship.

Variations are not favored under the law and presumed to be in conflict with the regulations. As stated in *Cromwell v. Ward*, 102 Md. App. 691, 703 (1995):

The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.

After due consideration of all of the testimony and evidence presented, I find that the Petitioner's property is substantially similar to other properties as to size, shape, and topography. As such, it does not meet the requirements for a finding of uniqueness as set forth in *Cromwell*. I cannot decide this case based on "extenuating circumstances." Having determined that no uniqueness exists as to the Petitioner's property, I must therefore deny the variance requested by the Petitioner. I do, however, find extenuating circumstances. The 11' x 11' space occupied by this porch has existed in one form or another for nearly 24 years. So often in this job, there is never a correct decision – but as the case here demonstrates one that seems not right, but simply less wrong. Thus, in denying the Petitioner's variance and as discussed with the parties at the hearing, I am persuaded to grant some relief that will be personal in nature to Ms. Miller and limited in duration. Mr. Diemer's primary concern was the future use of the porch and he wanted assurances that it would not be used in a manner that would result in disputes or in a breach of his privacy rights.

Pursuant to the advertisement, posting of the property and public hearing on this petition held, and for the reasons set forth above, the relief requested shall be partially granted and limited prior to the ultimate denial taking effect.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 25th day of November, 2009 that the Petition for Variance seeking relief from Sections 1B02.3.A.5, 1B02.3B, and 301.1A of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an open projection (open porch with roof) with a zero (0) foot side yard setback in lieu of the minimum required 7.5 feet, in accordance with Petitioners' Exhibit 1, be and is hereby PERMITTED in limited duration, prior to the DENIAL becoming final, subject to the following conditions which are restrictions precedent to the limited approval granted herein:

1. The Petitioner is hereby made aware that proceeding at this time is at her own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. The temporary variance relief granted to the Petitioner herein is personal in nature, limited in duration, and shall not run with the land so as to inure to the benefit of any subsequent property lessee or owner. To assure the current and future use of the subject property, the Petitioner will, within sixty (60) days of the date hereof, record in the Land Records of Baltimore County a Covenant to the Deed for her property (in the form attached) restricting the use of the property.
3. Said Covenant shall contain the proviso that such use shall terminate upon the sale of the property or the passage of ten (10) years, whichever comes first. The porch shall then be removed and the property brought into compliance with the zoning regulations.
4. A copy of the recorded Covenant shall be submitted to the Department of Permits and Development Management (DPDM) for inclusion in the case file.
5. The decision in this case is not a legal precedent that may be cited as such in any other zoning case.

Any appeal of this decision shall be taken in accordance with the Baltimore County Code Section 32-3-401.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

COVENANT AND DECLARATION OF UNDERSTANDING

Whereas, in a Petition for Variance before the Zoning Commissioner of Baltimore County, Case No. 2010-0097-A, Joyce Mae Miller, the Petitioner, requested permission to maintain an open projection (open porch with roof) with a zero (0) foot side yard setback in lieu of the minimum 7.5 feet required by the regulations, and the Zoning Commissioner, by Order, dated November 25, 2009, partially granted the request providing the following covenant be added to her Deed, which Deed was recorded in the Land Records of Baltimore County, at Liber 18642, Folio 260.

Joyce Mae Miller hereby covenants that the open porch and roof on the south side of the property shall be removed from its present location or relocated to the rear of the property upon the sale of the property or after a period of ten (10) years from the date of this Covenant, whichever occurs first.

As witness our hands and seals this _____ day of December 2009.

_____(SEAL)
Joyce Mae Miller

(State of Maryland
To wit
County of Baltimore)

I HEREBY CERTIFY THAT ON THIS _____ day of _____, 2009, before me a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared Joyce Mae Miller, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledge that she executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal:

NOTARY PUBLIC

My Commission Expires: