

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
N side of North Avenue; 146.5 feet W of		
the c/l of Francke Avenue	*	DEPUTY ZONING
8 <sup>th</sup> Election District		
3 <sup>rd</sup> Councilmanic District	*	COMMISSIONER
(302 North Avenue)		
	*	FORBALTIMORE COUNTY
<b>Ashley Elizabeth Hach</b>		
<i>Petitioner</i>	*	<b>CASE NO. 2010-0239-A</b>

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Ashley Elizabeth Hach. Petitioner is requesting Variance relief from Sections 1B02.3.A.5 and 1B02.3.C of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed single-family dwelling with a side yard setback of 15 feet to the street right-of-way in lieu of the minimum permitted 30 feet. The subject property and requested relief are more fully depicted on the site plan and minor subdivision plan, 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 request was Petitioner Ashley Elizabeth Hach and builder Robert Gentry. Also appearing from the Baltimore County Office of Planning was Karin Brown, and appearing as an interested citizen was Eric Rockel, who is also President of the Greater Timonium Community Council (“GTCC”). The GTCC is an umbrella organization with memberships of over 50 area community associations which collectively represents some 60,000 residents throughout a 25 mile perimeter of the Greater Lutherville/Timonium/Cockeysville area. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is rectangular in shape and consists of approximately 1 acre of land, more or less, zoned D.R.3.5. The property is located on the north side of North Avenue, situated between Francke Avenue to the east and Kurtz Avenue to the west, in the Historic Lutherville area of Baltimore County. The property is improved with an existing two-story single-family dwelling. Access to the property is by way of an existing driveway from North Avenue. The dwelling was built in 1892 and consists of approximately 1,368 square feet.

Petitioner acquired the property on February 23, 2010, as shown on the Deed that was marked and accepted into evidence as Petitioner's Exhibit 2. At this juncture, Petitioner and the builder, Robert Gentry, desire to subdivide this historic property in order to build a new home on the proposed new lot. As planned, Mr. Gentry would purchase the new lot from Petitioner Ms. Hach and construct the new home for sale. This would enable Petitioner to utilize the proceeds from the sale of the new lot to restore the existing home on the property, which was described as being in a state of disrepair. In order to follow through with their plans, Petitioner and Mr. Gentry have been before the Baltimore County Landmarks Preservation Commission ("the Commission"), and in particular the Lutherville Historic Advisory Committee ("the Committee") to the Commission. These entities have reviewed the minor subdivision proposal and have recommended approval; however, they also require that the proposed new home be built with a side loading garage as opposed to a front loading garage. According to the Committee, there has not been a new home with an integral garage with a front entry built in Lutherville since it became a Baltimore County Historic District in 1984.

However, in order to construct a new home with a side loading garage, as well as a sufficient driveway and turnaround area, additional space is needed. As shown on the minor

subdivision plan, this results in the proposed home being shifted toward Kurtz Avenue, thus requiring the variance request.

In support of the variance request, Mr. Gentry pointed out that the need for the variance is driven by the desire of the Commission and the Committee, as well as by the Office of Planning, for the new home to have a side loading garage. Letters from the Commission (dated March 2, 2010) and the Committee (dated February 3, 2010) were marked and accepted into evidence as Petitioner's Exhibits 3 and 4, respectively, and state that they are supportive of Petitioner's proposal, and in particular the variance request. In addition, a letter dated February 10, 2010 from the adjacent neighbors at 1712 Kurtz Avenue, Ted Houk and Pamela Jenkins, which was marked and accepted into evidence as Petitioner's Exhibit 5, expresses their support as well. Mr. Gentry also submitted elevation drawings that were marked and accepted into evidence as Petitioner's Exhibit 6. The drawings depict an attractive home that appears to fit within the setting of Historic Lutherville. As shown on a revised minor subdivision plan that was marked and accepted into evidence as Petitioner's Exhibit 1C, access to the new lot would be via the existing driveway from North Avenue. The existing driveway would lead to a parking pad and the side loading garage. Access to the existing home would be via a new driveway cut-out, also on North Avenue, adjacent to the existing driveway.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated April 5, 2010 which support Petitioner's variance request. Both the Lutherville Advisory Commission and the Office of Planning Preservation Services staff prefer this site design of a side-entry garage as opposed to a front-loaded garage.

Considering of all the testimony and evidence presented, I am persuaded to grant the variance relief. I find special circumstances or conditions exist that are peculiar to the land or

structure which is the subject of the variance request. The most obvious unusual circumstance is the fact that this property is located in a Historic District. This places limitations and restrictions on the ability to make certain improvements to the property and to subdivide. It is also noteworthy that the need for variance relief in this case is largely driven by the desires of the Landmarks Preservation Commission and the Lutherville Historic Advisory Committee for the proposed dwelling on the new lot to be constructed with a side loading garage. This necessitates additional space and results in an encroachment into the side yard to street right-of-way setback.

Another feature of the property that renders it unique in a zoning sense is the fact that it is bounded on three sides by public streets. In particular, the frontage on Kurtz Avenue to the west directly impacts the setback requirement. Also, as shown on the site plan, the subject property is the only property situated on the north side of North Avenue, between Kurtz Avenue and Francke Avenue. It is literally the only property on that side of the block -- a very odd placement and configuration -- with another property similarly situated on the south side of North Avenue.

I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner. Petitioner would be denied a beneficial use of the subject property that is permitted by the Regulations and supported by the Landmarks Preservation Commission and the Lutherville Historic Advisory Committee, as well as the Office of Planning and nearby neighbors. In addition, the variance would allow the proposed new home to be built and the new lot sold so the proceeds can be reinvested back into the property to restore the existing historic home.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. Thus, I find that the variance request can be granted as to meet the requirements of Section 307 of the B.C.Z.R. as interpreted in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

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

THEREFORE, IT IS ORDERED this 27<sup>th</sup> day of April, 2010 by this Deputy Zoning Commissioner that Petitioner's Variance request from Sections 1B02.3.A.5 and 1B02.3.C of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a proposed single-family dwelling with a side yard setback of 15 feet to the street right-of-way in lieu of the minimum permitted 30 feet be and is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her 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.
2. Petitioner shall submit building elevation drawings to the Office of Planning for approval prior to the issuance of any building permits.
3. Notwithstanding the relief granted herein, Petitioner shall comply with any and all applicable requirements and provisions of the Baltimore County Code and the B.C.Z.R., and the Landmarks Preservation Commission and any other applicable agencies, as related to the historic nature of the subject property.

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