

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Kentway, 200 feet NE of		
Liberty Parkway	*	OFFICE OF
12 th Election District		
7 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
(94 Kentway)		
	*	FOR BALTIMORE COUNTY
Donald G. Hafner		
<i>Petitioner</i>	*	CASE NO. 2011-0182-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance filed by the legal owner of the subject property, Donald G. Hafner. Petitioner is requesting Variance relief from Section 1B02.3.C.1 (D.R. 5.5) of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a rear yard setback of 5 feet in lieu of the minimum required 30 feet; and from Section 400.1 of the B.C.Z.R. to allow an accessory structure (existing frame shed) to be located in the side yard in lieu of the required rear yard location, and to allow an accessory structure (existing frame shed) to be setback 0.5 feet from a side property line in lieu of the required 2.5 feet minimum setback. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Petitioner Donald G. Hafner and Geoffrey Schultz with McKee & Associates, the professional land surveyor who prepared the site plan.

It should be noted that this matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management¹. A Code Inspections and Enforcement Correction Notice was issued to Petitioner on October 27,

¹ Case No: CO-0086292 and 0086792

2010 for not obtaining a permit for the addition to the rear of the dwelling and failure to obtain the required inspections. Petitioner testified that he hired a contractor from the *Dundalk Eagle* to complete this addition, and later learned he was not MHIC licensed and therefore could not obtain the requisite permits as promised. Hence, Petitioner filed the instant request for a variance to rectify the defects noted in the Correction Notice.

Testimony and evidence offered revealed that the subject property is rectangular in shape, contains 2,641 square feet, is improved with an existing two story end unit brick duplex, an existing one story brick garage (converted to living space) a one story frame addition (under construction), deck and the subject frame shed.

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 January 19, 2011 which indicate that the subject structure is a well-maintained windowless clapboard shed that is under roof. The existing structure is partially obscured by a 6 foot high fence. Nonetheless, the structure is characteristic of other accessory rear yard structures in the neighborhood. As such, the Planning Office does not oppose the Petitioner's request provided the adjacent neighbors have no objection. Petitioner testified that both of his adjoining neighbors support his request, and he advised that he chose the color of siding for the project based on his neighbors' preference.

Based upon the testimony and evidence presented, I am persuaded to grant the request for 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. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner. Specifically, the existing home is located on a small lot, and only the rear yard is suitable for an expansion to accommodate the Petitioner's growing family of five children. Petitioner testified

the additional space (approximately 260 square feet) would be for a “game room” to allow the children some room to spread out and play, which is not possible in the existing dwelling, which contains only 1,080 square feet of living space. The property is unique in that the proposed addition will adjoin the existing brick garage, causing it to be considered part of the main dwelling and subject to certain setback requirements, driving the need for variance relief.

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.

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

THEREFORE, IT IS ORDERED this 31st day of January, 2011 by this Administrative Law Judge that Petitioner’s Variance request from Section 1B02.3.C.1 (D.R. 5.5) of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a rear yard setback of 5 feet in lieu of the minimum required 30 feet; and from Section 400.1 of the B.C.Z.R. to allow an accessory structure (existing frame shed) to be located in the side yard in lieu of the required rear yard location, and to allow an accessory structure (existing frame shed) to be setback 0.5 feet from a side property line in lieu of the required 2.5 feet minimum setback, be and is hereby GRANTED, subject to the following:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is 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, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The one story addition, which is the subject of this variance case, shall not be used for human habitation or contain any living quarters.

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

 SIGNED
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/pz