

IN RE: PETITION FOR VARIANCE
SE side of North Point Road; 81
feet East of the c/l of Spruce Street
12th Election District
7th Councilmanic District
(1215 North Point Road)

Donna Pollard Huddleston
Petitioner

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2011-0347-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by the legal owner of the subject waterfront property, Donna Pollard Huddleston. Petitioner is requesting Variance relief under Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an open projection (existing deck) with a side yard setback of 4 feet 5 inches in lieu of the required 7.5 feet. The subject property and requested relief is more fully depicted 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 was Petitioner Donna Pollard Huddleston, and Brenda Lucky and Gary Lucky, Sr., Vice President of Gibbons and Lucky Home Improvement Company, Inc. The file reveals that the Petition was properly advertised and the property was properly posted as required by the Baltimore County Zoning Regulations.

It should be noted that this matter includes a complaint registered with the Building Inspection Division of the Department of Permits, Approvals and Inspections¹. A Code Inspections and Enforcement Correction Notice was issued to Petitioner on June 1, 2011, for a

¹ Case No: CO-0058647

deck that was not built within the scope of an approved permit; location and setbacks not adhered to. It should also be noted that in the course of the hearing, Petitioner also requested that consideration be given to granting a special hearing for the deck as a non-conforming use.

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.

Mr. Lucky testified on behalf of the Petitioner. He described the property as a single level dwelling on .159 acre zoned DR 5.5. The original residence was built in 1949. He testified that he was employed by the Petitioner to replace a very old 16 feet x 10 feet deck connected to the left side sliding glass doors with a new 16 feet x 10 feet deck at the same location. The witness noted that he sent an employee to obtain the building permit. He believes that the employee described the property improperly when getting the permit; that is, he failed to note that there was no actual rear door to the premises. There is a front door and sliding glass doors on the left side of the house which open onto the deck which was to be replaced. Therefore, he surmises, that the wording "rear of house" on the permit was an incorrect description of the location of the already existing deck to be replaced under the new permit. In fact, three inspections by different inspectors took place during the course of the construction and it was only the last inspector who raised the question giving rise to the issuance of the Code Inspection and Enforcement Correction Notice.

Addressing the requirements for a variance, the witness testified that the existence of a side door in lieu of a back entrance was unique in the area and therefore, in order to provide for a second entrance/exit, had to be utilized for the deck. He pointed out that Ms. Huddleston was severely handicapped and utilized a wheelchair. He stated that in order to provide her an

appropriate “access to the outside world” the continued existence of a deck emanating from the side sliding glass doors was necessary. Without the granting of the requested variance, any access for her in her condition would be impossible. He further stated that since the neighbors in the area suffered no such handicap as that of the Petitioner, the failure to grant her the variance would unreasonably prevent her the use of her property for the permitted purposes of entering or leaving the premises.

The Petitioner, Donna Pollard Huddleston, testified that 17 years ago she was injured in major automobile accident and suffered from traumatic brain injury, necessitating the use of a wheelchair. She confirmed that the sliding glass door on the left side of the house was in fact her “back door” for all intent and purposes, and led to the deck which she described as her “only outlet to the world.” She testified further that she had purchased the property over 30 years ago and that the original deck was built many years before that. This original deck, deteriorating over the years, was the reason that she employed Mr. Lucky to replace it with the same size deck at the same location.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested relief. As to the variance, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. There is also no question in my mind that the failure to grant the variance requested would do harm to this Petitioner to a much greater degree because of her physical condition than if the request were made by others not physically encumbered. I also note that as the Density Residential (DR) zoning classifications were imposed in 1971, that the uncontroverted testimony presented leads me to the conclusion that the existence of the deck in question here, unchanged from that originally constructed prior to the Petitioner’s ownership, clearly predated the zoning regulations which have

necessitated the instant case. The deck has certainly been used openly and continuously and there has been no abandonment or cessation of use. I therefore find that the subject deck as presently constructed is in fact a non-conforming use permitted under law.

I further find that the granting of the relief as set forth herein can be accomplished without injury to the public health, safety, and general welfare. Therefore, in all manner and form, I find that the variance requested can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R. as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995). *McLean v Soley*, 270 Md. 208 (1973).

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 13 day of July, 2011 by this Administrative Law Judge that Petitioner's Variance requests from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an open projection (existing deck) with a side yard setback of 4 feet 5 inches in lieu of the required 7.5 feet, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petitioner's Special Hearing request that the subject deck is in fact a permitted non-conforming use is 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.

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

Signed
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:pz