

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NE side of Del Rio Road; 220' W		
of the c/line of Delmar Avenue	*	OFFICE OF ADMINISTRATIVE
12 th Election District		
7 th Councilmanic District	*	HEARINGS FOR
(68 Del Rio Road)		
	*	BALTIMORE COUNTY
Gary W. and Michelle L. Dellinger		
<i>Petitioners</i>	*	CASE NO. 2011-0356-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Gary W. and Michelle L. Dellinger, the legal owners of the subject property. Petitioners request Variance relief from Sections 1B02.3.A.5 and 1B02.3.B of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an addition with a side yard setback of 1 foot 10 inches and rear yard setback of 1 foot 9 inches in lieu of the required 10 feet and 30 feet, respectively. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

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 Management.¹ Numerous Code Inspections and Enforcement Correction Notices and Stop Work Orders were issued to Petitioners: on July 10, 2010 (requiring valid permit for the new front porch roof, second floor addition, rear addition, attached garage and Stop Work Order), on August 16, 2010 (requiring valid permit for attached garage; variance relief to allow a 2 foot setback on side yard for attached garage), and on May 27, 2011 (requiring valid permit for attached garage on side of house and Stop Work Order). Hence, Petitioners filed the instant variance request.

¹ CO-0080749

Appearing at the requisite public hearing in support of the variance request were Gary and Michelle Dellinger, property owners. Appearing in opposition to the request was Mark Kelly, who resides at 96 Del Mar Avenue.

Testimony and evidence offered revealed that the property which is the subject of this variance request consists of 4,536 square feet, more or less, and is zoned DR 5.5. The property is located on the east side of Del Rio Road in the Dundalk area of Baltimore County. The owners of the property, Gary and Michelle Dellinger, are requesting variance approval for improvements that they have already made to their two story frame dwelling. The Applicants hired a contractor to perform substantial improvements to their home where they have lived for the past 17 years. Unfortunately, the contractor they hired to perform the work absconded with their money in the middle of the job and failed to pull permits for the work that was performed on the property. The property owners are left with a half finished construction project that violates zoning setbacks. They are requesting variance approval to try to move forward with this project given that a Stop Work Order has been issued by Baltimore County Building Inspectors.

As can be seen by the site plan that was submitted into evidence as Petitioners' Exhibit 1, the owners have constructed a second story addition on their home, extended the home off the back of the house by an additional 11 feet, and constructed an "L" shaped garage on the side of the dwelling. The garage addition comes as close as 1 foot 9 inches from the corner of their property line and 1 foot 10 inches on the side of their property line.

Appearing in opposition to the request was Mark Kelly, who lives behind the Applicants, having a street address of 96 Del Mar Avenue. Mr. Kelly is opposed to the garage being situated only 1 foot 9 inches from his property line. There is a privacy fence that separates Mr. Kelly's property from the Applicants' property; however, the garage addition extends well above the

stockade privacy fence. It is Mr. Kelly's opinion that the garage addition overwhelms the rear yard of his property. He further stated that many of the homeowners in this subdivision have little rear yard area associated with their properties. Therefore, he is opposed to this large garage situated so close to the rear yard property line of his house. He also stated that he confronted the Petitioners' contractor at the time of construction inquiring as to whether or not a valid permit was pulled for this project. He was told by the contractor that they did have all valid permits. This statement by the contractor was obviously false.

After considering the testimony and evidence offered at the hearing, I find that the Petitioners' request for variance relief shall be denied in part, and granted in part. The addition as it currently exists on the Petitioners' property not only overwhelms the small lot that it is situated on, but also imposes upon the property owned by Mr. Kelly. This adverse impact is caused by the construction that is occurring in the rear yard of the Dellingers' property. The side yard setbacks appears to be acceptable as no one appeared in opposition to that request. However, I shall deny the rear yard variance to allow a rear yard setback of 1 foot 9 inches in lieu of the required 30 feet. As to the side yard variance, I shall allow and will approve a variance to allow the side yard setback of 1 foot 10 inches for a small garage on the side of the Petitioners' dwelling.

In essence, by denying the rear yard variance, the Petitioners will have to tear down and remove much of the improvements that exist in their yard. Basically, the Dellingers have constructed an 11 foot addition on the rear of their home. That 11 foot addition constructed on the rear of their dwelling appears to have a setback to the rear property line of approximately 20 feet on the north side of the house tapering down to a setback of approximately 17 feet on the southern end of the addition. The setback is reduced due to the slanted nature of the rear property line. In essence, the Applicants shall be permitted to square off the addition along the rear of the

house and shall be permitted to keep a small garage for storage purposes or storing a small automobile on the side of their dwelling. All other improvements located in the rear of the property, said rear being defined as extending the rear wall of the addition over to the side property line, and removing all improvements that occur behind that rear building line. Reference is made to Petitioners' Exhibit 2, which has been marked and highlighted in red marker indicating that part of the addition that exists on the property today which must be torn down and completely removed from the rear yard. All other improvements shall be permitted to remain as a variance shall be granted for a rear yard setback of approximately 17 feet in lieu of the required 30 feet. Petitioners' Exhibit 2 shall be attached this Order as illustrative of the findings made herein and the area of the half finished improvements which must be removed permanently from the property.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioners as well as their neighbor, Mark Kelly, I find that Petitioners' variance request should be granted in part and denied in part.

THEREFORE, IT IS ORDERED this 4th day of August, 2011 by this Administrative Law Judge that Petitioners' Variance request from Section 1B02.3.A.5 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an addition with a side yard setback of 1 foot 10 inches in lieu of the required 10 feet, be and is hereby GRANTED;

IT IS FURTHER ORDERED, that the Variance request from Section 1B02.3.B of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a rear yard setback of 1 foot 9 inches in lieu of the required 30 feet, be and is hereby DENIED;

IT IS FURTHER ORDERED, that a Variance to allow a 17 foot rear yard setback in lieu of the required 30 feet shall be GRANTED to allow the Petitioners to keep the 11 feet addition on

the rear of the home as well as some of the garage which was constructed on the side of the dwelling. All other improvements located beyond that rear foundation wall of the house which are illustrated in red on the attached Petitioners' Exhibit 2 shall be permanently removed within 60 days from the date of this Order.

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

Signed _____
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

Attachment- Petitioners' Exhibit 2

TMK:pz