

| | | |
|--|---|-----------------------------|
| IN RE: PETITION FOR VARIANCE | * | BEFORE THE |
| E side of Falls Road, 780 feet | | |
| S from Gadd Road | * | OFFICE OF ADMINISTRATIVE |
| 8 th Election District | | |
| 3 rd Councilmanic District | * | HEARINGS FOR |
| (14411 Falls Road) | | |
| | * | BALTIMORE COUNTY |
| Donna Ariosa Gauthier aka Savitri Gauthier | | |
| <i>Petitioner</i> | * | CASE NO. 2012-0104-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 the legal owner of the subject property, Donna Ariosa Gauthier aka Savitri Gauthier. Petitioner is requesting Variance relief from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a side yard setback of 5 feet in lieu of the required 35 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 Ariosa Gauthier aka Savitri Gauthier and Bruce Doak of Gerhold Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan. The file reveals that the Petition was properly advertised and the property was properly posted as required by the Baltimore County Zoning Regulations. No Protestants or other parties were present.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability dated November 16, 2011, which states that any future proposed additions (building permits) will require review by Groundwater Management.

Bruce Doak proffered Petitioner's case. He described the subject property as a long rectangular lot of approximately 1.487 acres zoned RC 2. It is improved, according to the taxation and assessments record (Petitioner's Exhibit 6), by a one story structure built in 1942; and a second floor added in approximately 1945. Petitioner has owned the property since approximately 1980. One half of the property is cleared, while the remaining half is heavily wooded.

The Petitioner proposes to construct two additions, a two story addition in the rear of the present structure and a one story addition on its southern side. The side addition will require a variance permitting a 5 foot setback from the nearest adjacent property line in lieu of the required 35 feet. Further, Mr. Doak pointed out that the existing house was already within the 35 foot setback when it was imposed upon the already constructed building, but was legitimized as pre-existing when the zoning regulations were imposed. Any addition to the structure is, therefore, in violation of the present setback requirements ab initio.

Utilizing two aerial photographs of the area (Petitioner's Exhibits 2 and 3), Mr. Doak related that the subject site is surrounded by forests and streams. He stated that, granting the requested variance will not disturb the surrounding area. Further, the outside of the additions will be completed with vinyl siding to match that which already exists on the structure. Moreover, he pointed out that the closest neighbor is on the north side of the property, while the variance is being requested for the south side of the site, where the nearest neighbor's home is approximately 400 feet from the property line. He also pointed out that dual septic fields, one in the front and one in the rear, had just recently been constructed, as the original system was in a failing mode.

He then addressed the requirements for the requested variance. He pointed to the long rectangular shape of the property, the newly constructed dual septic fields, and the fact that the construction of the subject residence, built prior to zoning, which at its imposition had placed the

structure in violation of the required setback, as factors rendering the subject site unique. Given the constraints noted above, the only areas of the site amenable to the construction of the proposed additions were those set out in the Petition. Since any addition to this structure itself, is on its face not in conformance with the applicable side setback, the only way to construct an otherwise permitted addition to the building is by way of a grant of a side setback variance.

Finally, Mr. Doak presented a letter from the adjoining neighbor on the side for which the variance is being requested, in which she states that she has no objection to Petitioner's request.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Moreover, I find that strict enforcement of the B.C.Z.R. would cause the Petitioners to suffer practical difficulty and undue hardship.

Therefore, I also find that the variances requested can be granted in strict harmony with the spirit and intent of the said regulations, and in such a manner as to grant relief without injury to the public, health, safety, and general welfare. In all manner and respect, the variances requested meet the requirements of Section 307 of the B.C.Z.R. as well as those requirements established in *Cromwell v. Ward*, 102 Md. App. 691 (1995) and *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 December, 2011 by this Administrative Law Judge that Petitioner's Variance requests from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a side yard setback of 5 feet in lieu of the required 35 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. Any future proposed additions (building permits) will require review by the Groundwater Management section of the Department of Environmental Protection and Sustainability.

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