

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
NE corner of Todd Avenue and		
Wenig Avenue	*	OFFICE OF
12 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
(7312 Wenig Avenue)		
	*	FOR BALTIMORE COUNTY
Gene M. Hibler		
<i>Petitioner</i>	*	CASE NO. 2012-0172-A

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owner of the property, Gene M. Hibler. The Petitioner is requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a street side setback of 9 feet and a rear yard setback of 3 feet for a proposed addition (garage) in lieu of the required 25 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 Petitioner’s Exhibit 1.

Appearing at the hearing was Petitioner Gene M. Hibler and Todd Lewis, who is assisting the Petitioner with the project. Appearing in opposition to the Petitioner’s request was Petitioner’s brother, Richard Hibler, who resides at 1703 Todd Avenue.

This matter was originally filed as an Administrative Variance, with a closing date of February 20, 2012. On February 21, 2012, Richard Hibler, Petitioner’s immediately adjacent neighbor, requested a formal hearing on this matter. The hearing was subsequently scheduled for Tuesday, March 20, 2012, at 11:00 AM, in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson. In addition, a sign was posted at the property and an advertisement was published in *The Jeffersonian* newspaper, giving neighbors and interested

citizens notice of the hearing.

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.

Testimony and evidence offered at the hearing disclosed that the subject property is 22,220 square feet, zoned DR 5.5 and located in the Kimberly Farms subdivision in Dundalk. The property is improved with a single-family dwelling with an enclosed area of 1,194 square feet. Petitioner proposes to construct a garage (with dimensions of 38' x 50') at the rear of his home, and he indicated it would be used for storage of boats and antique vehicles. Petitioner's neighbor and brother, Richard Hibler, opposes the plan, and stated that the proposed garage was simply too big and would be situated too close to his home.

Petitioner and his contractor Todd Lewis described the proposal, and submitted elevation drawings (Exhibit 3) which depict in detail the attractive design and quality materials planned for the garage. I have no doubt it would be a handsome structure and I respect Petitioner's desire to construct an addition to the home left to him by his late mother. Unfortunately, I believe I am compelled under the law to deny the relief.

As an initial matter, the proposed garage would be extremely large and would be out of keeping with the homes in the vicinity. Indeed, the garage would be significantly larger than the dwelling itself, and would be positioned approximately 11 feet from Richard Hibler's home.

But more importantly, Petitioner failed to provide any evidence or proof to satisfy the rigorous test for variance relief set forth in *Cromwell v. Ward*, 102 Md. App. 691 (1995) and similar cases. That precedent, and B.C.Z.R. § 307, requires a Petitioner to show that his property

is unique in some way, and that strict enforcement of the B.C.Z.R. would cause the owner to suffer an unreasonable hardship. No evidence or testimony was submitted on these points, and I regret that I am therefore unable to grant the relief.

During the hearing, Petitioner mentioned that he was also constructing a second floor addition to his home, and these renovations are also shown on the proposed elevation sketches. (Exhibit 3). Petitioner indicated he does not need any zoning relief to construct that second story addition, and therefore, there is nothing in this Order that should in any way preclude the County from issuing a permit for that addition, so that the Petitioner can begin construction on that project.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be denied. :

THEREFORE, IT IS ORDERED, this ___22nd_____ day of March, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance relief Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a street side setback of 9 feet and a rear yard setback of 3 feet for a proposed addition (garage) in lieu of the required 25 feet and 30 feet, respectively, be and is hereby DENIED.

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/dlw