

IN RE: PETITION FOR VARIANCE

NE corner of Hopkins Road and
Dorking Road
9th Election District
5th Councilmanic District
(300 Hopkins Road)

Christiane M. Rothbaum
Petitioner

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BEFORE THE
OFFICE OF
ADMINISTRATIVE HEARINGS
FOR BALTIMORE COUNTY
CASE NO. 2012-0221-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Variance filed by Christiane M. Rothbaum, the legal owner. Petitioner is requesting Variance relief from Section 301.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an existing open projection (existing deck, porch and landing) with a rear yard setback of 24.33' in lieu of the required 37.5'. 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 was Petitioner Christiane M. Rothbaum and Joe Milio with HMR Services, Inc. Art Buist, Esquire, was in attendance and represented the Petitioner. Appearing in opposition were Jean K. Duvall, Carol Zielke, Bruce Hirshauer, Kris Henry, and Larry Fogelson. J. Carroll Holzer, Esquire appeared and represented the Rodgers Forge community. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R.

Testimony and evidence offered revealed that the subject property is 3,774 square feet and is zoned DR 10.5. The property is improved with a brick end-of-group town home, and the pictures submitted show the property is well maintained and attractive. Petitioner seeks approval for an

“open projection” (i.e., open porch or deck) that has already been constructed and she needs variance relief to “legitimize” that structure.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse comments from any of the County reviewing agencies.

Based upon the testimony and evidence presented, I believe I must deny the request for variance relief. I find – as Judge Stahl did in an earlier case – that there is nothing particularly “unique” about the property owned by Petitioner. Rather, the Petitioner’s home is virtually identical to the other 1,773 homes in Rodgers Forge, deliberately so. The neighborhood has a cohesive and uniform feel which is a major part of its appeal and market value. Counsel for Petitioner contended that the topography change in Petitioner’s rear yard rendered the property “unique” as that term is used in Maryland law, but I respectfully disagree. The Maryland cases talk about “exceptional topographic conditions” that may lead to the grant of variance relief, but I do not believe that an elevation or grade change of less than one foot would meet this standard. *See, Cromwell v. Ward*, 102 Md. App. at 701.

Though the Petition for Variance will be denied, I at the same time do not believe the Petitioner needs variance relief to enable her to keep her open porch. In this regard, I respectfully disagree with the conclusions reached by Administrative Law Judge Kotroco in his decision dated January 19, 2012. The Zoning Commissioner’s Policy Manual (ZCPM) states that the open projection “rules are dependent upon when the subdivision occurred.” ZCPM § 301-1, p. 3-1. Petitioner’s house was constructed in 1937, and the Rodgers Forge subdivision (or at least the portion containing Petitioner’s home) was thus approved well before the adoption of the B.C.Z.R. The first County zoning regulations were adopted in 1945, and those regulations provide that a rear yard in a “D” Residence Zone (for Group houses, now known as townhouses) must have a

minimum depth of 25 feet. B.C.Z.R. (1945) Section VI, C.4. (Petitioner's open porch is now located 24.33' from the rear lot line, which is approximately 8 inches deficient, assuming the 1945 regulations were applicable).

The 1945 regulations also provide that "uncovered porches" may be permitted where they would not "obstruct light and ventilation." B.C.Z.R. (1945) Section X, A.2. *See also*, ZCPM Section 301.1.A.1. There was no testimony presented in this case to the effect that Petitioner's porch would obstruct light or air, which is understandable given the porch is only one foot above grade. Thus, I do not believe variance relief was needed in the first instance.

This of course leaves the parties in a quandary, which is certainly not my intent. Counsel for Petitioner requested that, if relief was denied, I provide in the Order some further clarification of a "solution" to the problem. But that is not a function performed by an Administrative Law Judge hearing a zoning case. Rather, it is the Department of Permits, Approvals and Inspections (PAI), and the Administrative Law Judge hearing that agency's case, that must impose fines and order restoration of property in violation of the B.C.Z.R. Baltimore County Code (B.C.C.) Section 3-6-301.

That has already occurred in this case, which itself is somewhat unorthodox. In most cases, a zoning violation case will be held in abeyance to allow the homeowner to pursue variance relief to legitimize the structure or building at issue. Here, Administrative Law Judge Kotroco found the open porch violated the B.C.Z.R, and imposed a \$1,000 fine. He did not order, as he would have been permitted to do, that the porch be removed. B.C.C. § 3-6-207. It is thus unclear whether the County would be authorized to pursue additional administrative remedies against the Petitioner, or if further prosecution at this point would be barred by principles of *res judicata*. *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass'n.*, 192 Md. App. 719, 730 (2010) (well-settled that principles

of res judicata apply to administrative proceedings). The B.C.C. does contain a provision authorizing the Department of PAI or adjacent neighbors to seek injunctive relief from a court, but it is unclear whether at this juncture res judicata would be a viable defense to such an action. B.C.C. §§ 32-3-607; 3-6-202. As noted above, those are issues decided by an Administrative Law Judge hearing zoning violation cases, and are beyond the scope of the present hearing involving only a petition for variance relief.

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 DENIED.

THEREFORE, IT IS ORDERED this 14th day of June, 2012 by this Administrative Law Judge that Petitioner's Variance request from Section 301.1.A of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an existing open projection (existing deck, porch and landing) with a rear yard setback of 24.33' in lieu of the required 37.5', 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 M. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JMB/dlw