

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(136 Newburg Avenue)		
1 st Election District	*	OFFICE OF ADMINISTRATIVE
1 st Councilmanic District		
Paul & Rosemary Dillingham	*	HEARINGS FOR
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0128-A

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owners of the property, Paul & Rosemary Dillingham. The Petitioners are requesting Variance relief from § 104.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit an addition in the rear of an existing non-conforming dwelling with a 23' extension in lieu of the permitted 9' (more than 25% extension) of the building so used. The undersigned indicated to counsel & Petitioners that the petition incorrectly sought relief under B.C.Z.R. § 104.3. That regulation concerns “non-conforming uses,” which is not at issue here. The property contains a single family dwelling, which is a permitted use in the DR 2 zone. The Petitioners want to construct a small addition (family room) on the rear of the home, and to do so they need variance relief from the bulk and area requirements of the DR 2 zone. The public received the requisite notice that variance relief was being sought, but I will consider the petition under a different section of the B.C.Z.R. than originally invoked by Petitioners.

The subject property and requested relief is more fully depicted on the amended site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of

December 31, 2012. On January 7, 2013, the Office of Administrative Hearings requested a formal hearing on this matter.

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

Appearing at the public hearing in support for this case were Paul and Rosemary Dillingham, property owners and Lewis Wilson, Esquire, who represented the Petitioners. There were no interested citizens in attendance, and the file does not contain any letters of protest or opposition.

Testimony and evidence revealed that the subject property is 18,260 square feet and is zoned DR 2. The property is improved with a single family dwelling (24' x 36') that was constructed in 1924. The Petitioners want to construct a one-story room (24' x 23') at the rear of their home to accommodate their family.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

The Petitioners have met this test. Mr. Dillingham testified that the property is of irregular dimensions, as seen in the location survey admitted as Exhibit 2. The easterly property boundary is 150' and the westerly boundary line is 190' long, yielding a trapezoidal shaped property. In addition, as shown on the survey admitted as Exhibit 3, the rear of the property

slopes downward, from an elevation of 293' at the dwelling to 286' at the rear of the lot. These factors make the property unique. The Petitioners would experience a practical difficulty if the regulations were strictly enforced, since they would be unable to increase their living space to accommodate their three children.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED, this 1st day of March, 2013 by the Administrative Law Judge for Baltimore County, that the Petition for Variance relief from § 1B02.3 of the Baltimore County Zoning Regulations ("B.C.Z.R."), (1) to permit side yard setback of 8' in lieu of the required 15'; (2) to permit sum of side yard setbacks of 26' in lieu of the required 40'; (3) to permit front yard depth of 32' in lieu of the required 40'; (4) to permit minimum lot width of 50' in lieu of required 100'; and (5) to permit net lot area of 18,260 sq. ft. in lieu of required 20,000 sq. ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and expressly conditioned upon the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order, however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and to be responsible for returning, said property to its original condition.
2. Petitioners must submit for review and approval to the Department of Planning (prior to permit issuance) building elevations or drawings of the proposed addition to ensure that it is compatible with the existing single family dwelling and the neighborhood.

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

Order.

JEB:sln

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County