

IN RE: PETITION FOR VARIANCE
(7355 Chesapeake Road)
15th Election District
6th Councilman District
Christopher Pasko
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0175-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Christopher Pasko, the legal owner of the subject property. 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 proposed addition (attached garage) to have a side yard setback of 4.7 ft. in lieu of the required 10 ft. 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 public hearing in support of the requests was Christopher Pasko, owner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

A Zoning Advisory Committee (ZAC) comment was received from the Department of Environmental Protection and Sustainability (DEPS), indicating Petitioner must comply with certain CBCA regulations prior to permit issuance. In addition, Mr. Kennedy of Bureau of Development Plans Review (DPR) submitted a comment noting that Petitioner must comply with tidal floodplain regulations, and Mr. Pasko indicated he had a flood certificate showing his property meets the required floodplain elevation.

Testimony and evidence revealed that the subject property is 10,000 square feet and is zoned DR 5.5. The Petitioner is restoring and enlarging an existing dwelling on site, and to do so requires variance relief.

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).

Petitioner has met this test. The lot is narrow (50' width) and was created in the 1940's before the adoption of the B.C.Z.R. Thus, it is unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, given he would be unable to construct the contemplated improvements. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of County opposition. In addition, Petitioner's adjoining neighbors indicated in writing they were not opposed to the petition.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 29th day of March, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 1B02.3.C.1. of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed addition (attached garage) to have a side yard setback of 4.7 ft. in lieu of the required 10 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for his appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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.

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:sln