

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(8109 Walnut Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Roberto Aguilera	*	HEARINGS FOR
Legal Owner/Petitioner	*	BALTIMORE COUNTY
	*	Case No: 2020-0265-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Roberto Aguilera, legal owner (“Petitioner”), of the property located at 8109 Walnut Avenue, Rosedale (the “Property”). Petitioner is requesting variance relief from Baltimore County Zoning Regulations (“BCZR”) §1B02.3.C.1 to permit a proposed addition with a rear yard side setback of 12.4 ft. in lieu of the required 30 ft.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Roberto Aguilera appeared in support of the Petition. Neighboring property owner Glenn Werner, 519 Patuxent Avenue, Rosedale, MD 21237 was also in attendance.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) which indicates that the subject property is located within the Chesapeake Bay Critical Area (“CBCA”). A ZAC comment was also received from the Department of Planning (“DOP”) which did not oppose the requested relief.

The Property measures 6,816 sq. ft. +/- and is zoned in Density Residential (DR 5.5). As reflected in the photographs provided by the Petitioner, the single family home, which is vacant, in disrepair and is structurally unsound. Various additions and porches were built onto the home by previous owners which jut out in a haphazard manner, rendering the interior space closed in

and unusable. In short, the Petitioner is proposing to even-out and make square, as well as to make the roof lines even for the two (2) proposed replacement additions as shown on the site plan (the "Site Plan"). (Pet. Ex. 7). The small addition on the front of the home will measure 10 ft., 3 in by 2 ft. (*Id.*). The addition on the side and rear yard will measure 15 ft., 9 in by 18 ft., 2 ½ in. (*Id.*). Importantly, Mr. Aguilera testified that, as reflected on the Site Plan, the outermost north eastern walls of the house will remain the same such that, when each of the additions are complete, the outermost walls will remain in line with the existing outermost walls of the home. Accordingly, the existing setbacks will not change.

Again, the proposed replacement additions will make the home square. The existing carport on the north eastern side will remain. It will also be necessary to raise up the roof on both of those additions to make the new roof lines even the existing roof. Proposed floor plans were also provided along with elevations showing the finished product. (Pet. Ex. 11). It is clear from the photographs that the existing side/rear addition lacks a proper foundation as the corners of that side rear porch are resting on unsupported masonry cylinders.

Due to the proximity of an existing stream, one-half of the Property is located with the CBCA. The rear replacement addition is located in a Limited Development Area. (Pet. Ex. 8). Mr. Aguilera testified that all information required by DEPS, and specifically EIR, required to determine lot coverage and afforestation requirements has been provided to those agencies.

Glenn Werner was present during the hearing and had the opportunity to review the Petitioner's exhibits. Mr. Werner's backyard meets side/rear yard of the Property. Mr. Werner expressed his understanding of the proposed additions. He agreed that replacing the unsound structures on the home and making those replacement additions even and square, without extending the additions beyond the existing outer north eastern wall of the home, will be an

improvement to the neighborhood. Both Mr. Aguilera and Mr. Werner agreed that the home is an eye-sore in a neighborhood consisting of well-maintained, attractive single family homes.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

At issue in this case is the 12 ft., 4 in setback on the eastern corner of the rear addition to the Property line which currently exists. Of note, the proposed rear replacement addition is not extending beyond the existing side and rear building lines. Additionally, the front addition is not extending beyond the existing front outer wall. Accordingly, there is minimal-to-no change to the rear/side setback lines. I find the Property is unique due to its small size. The home is also peculiar because there have been various structures added onto the home by previous owners without compliance with Building Code.

Due to the unique features of the Property, I find that the Petitioner will suffer a practical difficulty if the variance is not granted because the home cannot be improved to meet Building Codes and will remain structurally unsafe. The proposal here is to replace the existing side/rear addition along the same outermost exterior building lines so there is no additional encroachment here of the side or rear setback lines. As it currently exists the side/rear setback is currently 12 ft., 4 in and will remain the same after the home is made square.

I find the variance here can be granted within the strict harmony of the spirit and intent of the DR 5.5 area regulations. I also find that the relief can be granted without injury to the public, health, safety and general welfare and indeed, particularly in light of Mr. Werner's support for the

Petition. Thus, the variance relief here will protect the community from a vacant, unsafe structure.

THEREFORE, IT IS ORDERED, this **15th** day of **April, 2021** by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from BCZR, §1B02.3.C.1 to permit an addition with a rear yard side setback of 12.4 ft. in lieu of the required 30 ft. of the Baltimore County Zoning Regulations (“BCZR”) is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must comply with the DEPS ZAC comment, a copy of which is attached hereto and make a part thereof.

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



MAUREEN E. MURPHY
Administrative Law Judge
For Baltimore County

MEM/dlm