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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE |
| (30 Stemmers Run Road) | | |
| 15 th election District | * | OFFICE OF |
| 6 th Council District | | |
| Marlind Homes, LLC | * | ADMINISTRATIVE HEARINGS |
| | | |
| <i>Legal Owner</i> | * | FOR BALTIMORE COUNTY |
| | | |
| Petitioner | | Case No. 2020-0175-A |
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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Variance filed on behalf of Marlind Homes, LLC, Legal Owner (“Petitioner”). The requested variance relief is from the Baltimore County Zoning Regulations (“BCZR”) § 301.1.A to permit an open projection rear deck on an existing non-conforming dwelling that is located in a BL zone and an adjoining DR-16 zone, with side setbacks of 10 ft. and 4 ft. in lieu of the required minimum side yard setback of 18.75 ft. on both side yards; and, from BCZR § 301.1.A to permit an open projection rear deck that is 384 sq. ft. which is larger than 25 percent of the footprint of the existing residence or 331.25 sq. 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. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”). They did not oppose the requested relief.

Petitioner Linda M. Felts of Marlind Homes, LLC, appeared in support of the requested relief. John Gontrum, Esq., represented the Petitioner. There were no protestants or interested persons in attendance.

The property is approximately 10,735 sq. ft. and is zoned BL, BR. Mr. Gontrum explained that the predominant adjoining zone is DR 16, which requires 25 foot side yard setbacks. He further explained that the plat containing the subject lot was recorded in 1920, prior to the enactment of the BCZR, and that the lots are all approximately 50 feet wide. As a result, meeting the 25 foot setback requirements is metaphysically impossible. As Mr. Gontrum aptly put it: “it would leave no there there.” He explained that Ms. Felts has completely refurbished this formerly dilapidated residence. The steps and deck on the side of the house are needed in order to enter the home because the “front” door is actually on the side. The large rear deck is needed because the house sits close to Stemmers Run road, a busy arterial road, so a porch on the front of the house would not be desirable. Mr. Gontrum submitted zoning decisions where similar variances were granted for two other properties on the street. (Petitioner’s Exhibit 3). Finally, photos were submitted showing that the requested variances would not negatively impact the adjoining properties.

Variance

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).

Mr. Gontrum explained that the property is unique because it was constructed prior to the enactment of the BCZR and it is a narrow trapezoidal parcel. The petitioner would suffer practical difficulty and hardship if the variance were denied because she would be unable to construct the

proposed deck. I find that the variances can be granted within the spirit and intent of the BCZR and without causing harm to the public health, safety, or welfare.

THEREFORE, IT IS ORDERED this **7th** day of **December, 2020**, by this Administrative Law Judge, that the Petition for Variance from the Baltimore County Zoning Regulations (“BCZR”) § 301.1.A to permit an open projection rear deck on an existing non-conforming dwelling that is located in a BL zone and an adjoining DR-16 zone, with side setbacks of 10 ft. and 4 ft. in lieu of the required minimum side yard setback of 18.75 ft. on both side yards; and, from BCZR § 301.1.A to permit an open projection rear deck that is 384 sq. ft. which is larger than 25 percent of the footprint of the existing residence or 331.25 sq. ft. are hereby GRANTED.

The relief granted herein shall be subject to the following:

- 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 their 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.

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

Signed
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm