

IN RE: PETITION FOR VARIANCE
(11 Victoria Falls Drive)
8th Election District
3rd Council District
Tim Mooney
Legal Owner

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS OF
* BALTIMORE COUNTY
*
* **CASE NO. 2020-0296-A**

Petitioner

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Tim Mooney, Petitioner for property located at 11 Victoria Falls Drive. The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) § 301.1 to permit an open deck to extend 40 percent (12 ft.) into the minimum rear yard setback, in lieu of the permitted 25 percent (7.5 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 variance.

The Petitioner, Tim Mooney appeared at the hearing. There were no interested parties or citizens at the hearing. The subject property is approximately .046 acres and is zoned DR 5.5. Mr. Mooney explained that this is a townhouse unit in the Loveton Farms subdivision. The site has numerous mature trees and a substantial grade change. In addition, as shown by the photograph in Petitioner’s Exhibit 3, the existing deck on his unit is staggered from the adjoining units so that this proposed deck will protrude further into the rear yard than the others, and that this is why he

needs the 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).

The site is unique for a variety of reasons, as described above. As also noted above, the unique siting of this townhouse with respect to the adjoining townhouses is what necessitates the requested variance. I find that the variance is within the spirit and intent of the BCZR and that it will not harm the public health, safety or welfare.

THEREFORE, IT IS ORDERED, this **23rd** day of **June 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR § is hereby § 301.1 to permit an open deck to extend 40 percent (12 ft.) into the minimum rear yard setback, in lieu of the permitted 25 percent (7.5 ft.) is 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