

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(6809 Chippewa Drive)</b>		
3rd Election District	*	OFFICE OF ADMINISTRATIVE
2 <sup>nd</sup> Council District		
Eric & Rivka Leichter	*	HEARINGS OF
Legal Owners/Petitioners	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2020-0258-A</b>

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by Eric and Rivka Leichter (the “Petitioners”) for property located at 6809 Chippewa Drive (the “Property”). The Petitioners are requesting variance relief from Baltimore County Zoning Regulations (“BCZR”) §1B02.3.B to permit additions to a residence in a DR 5.5 zoned subdivision that is vested under the 1954 Zoning Regulations with proposed additions to: (1) the north side with a side yard setback of 3 ft, 6 inches in lieu of the minimum required 10 ft.; (2) the south side with a side yard setback of 4 ft, 10 inches in lieu of the minimum required 7 ft.; and (3) the rear with a rear setback of 13 ft. in lieu of the minimum required 15 ft. and a side yard setback of 4 ft,10 inches in lieu of the minimum required 7 ft.

The Petition was filed as an Administrative Variance but a formal demand was filed by the Office of Administrative Hearings, requesting more information. 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. Petitioners appeared at the hearing along with Daniel Ankri, the architect who prepared a site plan in regard to the proposed additions. (Pet. Exhibit B). Irvin Flax, the neighboring property owner also appeared and testified. A Zoning Advisory Committee (“ZAC”) comment was received from the Department of Environmental Protection and

Sustainability (“DEPS”) who did not express any environmental concerns with the Property.

The Property is approximately 7,490 square feet and is zoned DR 5.5. It was created as part of the Valley Stream Subdivision in October of 1954 and recorded in the Land Records of Baltimore County (liber 20, folio 85). As such it is vested under the 1954 BCZR in regard to applicable setbacks. The Petitioners purchased the Property in 2013. It is a split-level home that was previously enlarged on both the northern and southern sides prior to their purchase. They need to expand the footprint of their home in order to accommodate their growing family.

Mr. Ankri testified that the Petitioners are requesting a 13 ft. setback from the eastern rear Property line in lieu of the minimum 15 ft setback.<sup>1</sup> (Pet. Ex. B). The reason for the rear yard variance is to expand the dining room for family gathering and religious events. On the southern side yard (adjacent to 6807 Chippewa Dr.), the request is to align the new addition area for the dining room with a prior addition to make the entire structure even on that side. As such, the variance relief is for a 4 ft., 10 inch side yard setback in lieu of the required 7 ft. The new addition will extend into the rear yard as well as into the front yard. (*Id.*). The third variance is on the northern side yard requesting to extend by an additional 1 ft, 4 inches the existing addition, and replace it with one which will be setback from the Property line 3 ft., 6 inches rather than the required 10 ft. (Pet. Ex. C). Mr. Ankri explained that it would not be possible to add a second floor onto the northern side addition because bedrooms are located there.

Irwin Flax, 6808 Cherokee Drive lives in the home to the rear of the Property. Mr. Flax’ rear yard backs up to the rear yard of the Property. Mr. Flax testified that the northern side addition on the Property was constructed in 2013 by the prior owners. He also shared that he put an addition onto the rear yard of his home but stayed within the 15 ft. setback. Accordingly, Mr. Flax believes

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<sup>1</sup> The Site Plan inadvertently reads that the rear minimum required setback is 20 ft. The Petition accurately reads 15 ft. rear yard setback.

that the Petitioners should keep the rear addition inside the required setback. Mr. Flax highlighted that the proposed side yard additions are very close to the Property lines with adjacent 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).

The architectural style of the home is unique in that it is a split level with an addition on either side of the home which were clearly built after 1954 and which extend into the minimum required setbacks. However, the file did not reflect any prior requests for zoning relief. It is peculiar to this house that the northern side addition is only on the first level and a second floor cannot be added onto that addition because there are bedrooms in that area.

With regard to the rear yard setback, while the Petitioners were ideally requesting a 13 ft setback to extend the dining room, Mr. Ankri testified that they would be willing to keep the rear addition within the 15 ft setback. I find this result to be reasonable particularly given the proximity of Mr. Flax backyard to the Property line. Accordingly, the required rear setback will be met and that variance is moot.

With regard to the northern side addition, I find that the Petitioners would suffer a practical difficulty in not being able to replace the existing northern side addition with a newer addition particularly given the Property's uniqueness and the family's need for space. Given that the existing addition is already in the required setback, the Petitioners may build the replacement addition within the same footprint as the existing addition. In this way, the request for an additional 1 ft, 4 inches beyond the existing footprint of the northern side addition will be denied.

Finally, with regard to the southern side addition, I find that the Petitioners would suffer an unreasonable hardship in not being able to align the previous southern side addition with both the front of the home and the new rear addition. Moreover, the variance request for 4 ft., 10 inches for the southern side addition, includes the outer most wall of the existing building envelope and is not a request for additional space beyond the existing outer wall. In short, this last variance simply aligns the entire southern building envelope, the result of which will be a rectangle and will eliminate the bump-out. I find that the both northern side yard and southern side yard variances can be granted within the spirit and intent of the BCZR and without causing injury to the public health, safety and general welfare.

THEREFORE, IT IS ORDERED, this 10th day of **March 2021**, by the Administrative Law Judge for Baltimore County, in regard to the Petitions for Variance pursuant to BCZR

(1) A proposed rear addition with a setback of 13 ft. in lieu of the minimum 15 ft is hereby **MOOT**. Petitioners shall construct the rear addition within the 15 ft. required setback per the 1954 BCZR.

(2) A proposed addition to the northern side with a side yard setback of 3 ft. 6 inches in lieu of the minimum required 10 ft. is **DENIED**. However, Petitioners may construct the new northern side yard addition within the footprint of the existing northern side yard addition and, to the extent that the existing footprint is within the required setback, the variance is **GRANTED**.

(3) A proposed addition to the southern side yard with a setback of 4 ft. 10 inches in lieu of the minimum required 7 ft. hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are 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, Petitioners would be required to return the subject property to its original condition.

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Signed  
MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm