

IN RE: PETITION FOR VARIANCE
(318 W. Cherry Hill Court)
4th Election District
4th Council District
Naseem Rafiq

Legal Owner

Petitioner

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* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS OF
* BALTIMORE COUNTY
* **CASE NO: 2021-0213-A**

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Naseem Rafiq (the “Petitioner”) for property located at 318 W. Cherry Hill Rd., Reisterstown (the “Property”). Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”), §1A04.3.B.2.b to permit an addition with a side setback of 13 ft. in lieu of the required 50 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. The Petitioner’s son-in-law, Salin Nawaey, appeared at the hearing *pro se*. A site plan was prepared and sealed by Duley and Associates, Inc., land surveyors (the “Site Plan”). (Pet. Ex. 3). There were no Protestants or interest citizens who attended the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”) which agencies did not oppose the requested relief.

The Property is approximately 0.54 acres +/- (23,565 sf) and is improved with a 1-story frame building, with a front porch and basement constructed in or about 1945. The Property fronts on West Cherry Hill Ct. and is split-zoned Rural, Residential (RC 5) and Office-Residential (OR-

1). The Site Plan depicts that the Property is oddly shaped and is consumed with Forest Buffer area in the rear of the Property. The aerial photograph reveals that the Property is surrounded by other residential properties. (Pet. Ex. 2).

Mr. Nawaey explained that his family, along with the Petitioner, plan to renovate the Property by building a 3,000 sf +/- addition to the rear of the home which will have a 2-car garage (600 sf). (Pet. Ex. 3). Toward that end, he obtained a Forest Buffer Variance from DEPS due to the proximity of the proposed addition to the Forest Buffer. DEPS granted the Forest Buffer Variance by letter dated September 24, 2021 requiring that the Petitioner to erect signs to protect the Forest Buffer. (Pet. Ex. 1). Mr. Nawaey also provided architectural renderings of the proposed addition showing an attractive, renovated home and garage. (Pet. Ex. 4). Mr. Nawaey explained that the home will continue to use the private well located in the front yard but will connect to public sewer which has been extended to the Property line and is available to be connected.

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 Property is unique due to its irregular shape and the Forest Buffer area in the rear yard. I find that the Petitioner would suffer a practical difficulty and unreasonable hardship if the proposed side setbacks were not granted because this home was constructed prior to the enactment of the RC5 regulations and the Petitioner would not be able to construct the addition as proposed if strict compliance were required. I also find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or

general welfare, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED, this **8th** day of **November 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to BCZR, §1A04.3.B.2.b to permit an addition with a side setback of 13 ft. in lieu of the required 50 ft. is 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.
2. Petitioners 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.

Signed
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm