



JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

January 30, 2023

Timothy M. Kotroco, Esquire – tkotroco@gmail.com
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: Petition for Variance – **MOTION FOR RECONSIDERATION**
Case No. 2022-0242-A
Property: 209 Ballard Avenue

Dear Mr. Kotroco:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), “a person aggrieved or feeling aggrieved” by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink that reads "Maureen E. Murphy".

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlw
Enclosure

c: Mr. Walter Somoza – waltsomoza@gmail.com
Justin Ottensmeyer – jroassociates@gmail.com

IN RE: PETITION FOR VARIANCE
(209 Ballard Avenue)
15th Election District
6th Council District
Walter Somoza,
Legal Owner

Petitioner

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS OF
* BALTIMORE COUNTY
* **CASE NO. 2022-0242-A**

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

This matter comes before the Office of Administrative Hearings (“OAH”) as a Motion for Reconsideration filed by Timothy Kotroco, Esquire on behalf of Walter Somoza, legal owner and Petitioner (the “Petitioner”) for property located at 209 Ballard Avenue, Middle River (the “Property”). In the Motion, Petitioner has reconfigured the proposed replacement dwelling on a revised site plan (the “Revised Site Plan”), dismissed the previously requested reduced side yard setbacks, and is now requesting to elongate the replacement dwelling under a different section of Baltimore County Zoning Regulations (“BCZR”), §104.3.

In the Motion, Mr. Kotroco correctly pointed out that, at the hearing, Petitioner was *pro se* and assisted only by licensed surveyor, Justin Ottensmeyer. The Motion further recognizes that evidence presented at the hearing was insufficient to support the relief as originally requested. With the new relief requested in the Motion under BCZR, §104.3, the replacement dwelling no longer needs side yard setbacks and will be built within the same footprint as the 110 year old non-conforming home. As initially requested, the reduced side yard setbacks formed the basis for the Department of Planning (“DOP”) ZAC comment opposing the relief in that Petitioner was not suffering a practical difficulty as he could move the lot lines and have sufficient side yard setbacks.

As set forth in the Motion and as shown on the Revised Site Plan and architectural rendering, the proposed replacement dwelling meets the front and rear setbacks and will have the

same side yard setbacks as currently exist with the 110 year old home. (Pet. Ex. 4, 5). With the new evidence presented, I find that the existing home is non-conforming. As such, given the size of the Property, any replacement dwelling with typical modern construction and amenities will need to be elongated on this Property beyond the required 25% limit under BCZR, §104.3. As set forth on the Revised Site Plan, the replacement dwelling will be extended an additional 18 ft. which calculates to 48% extension under BCZR, §104.3. (Pet. Exs. 4, 5).

The unwritten standard applicable to a Motion for Reconsideration under Rule 4-K has as its basis MD Rule 2-535(b) (fraud, mistake irregularity) and (c) (newly discovered evidence). The Motion here presented both grounds for a ‘mistake’ and ‘newly discovered evidence.’ I find that if the additional 18 ft. extension is not granted, Petitioner would suffer a practical difficulty as a replacement dwelling could not reasonably be constructed. I further find that given that the Petitioner has the option of leaving the existing home in place with its non-conforming side yard setbacks, the homes to be built on the adjacent property (to the north), would have to live with those existing setbacks. With the replacement home and same side yard setbacks, the surrounding community will benefit from an upgraded home. Given the “change in facts and circumstances” as articulated in *Jesus Christ is the Answer Ministries v. Baltimore County*, Case No.: RDB-17-3010, I find the legal analysis regarding the issues of *res judicata* and collateral estoppel there, is instructive and applicable here. Accordingly, the relief requested in the Motion is within the spirit and intent of the BCZR and will be granted, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED, this 30th day of **January, 2023**, by the Administrative Law Judge for Baltimore County, that the Motion for Reconsideration be, and it is hereby, **GRANTED**.

The relief granted herein shall be subject to the following:

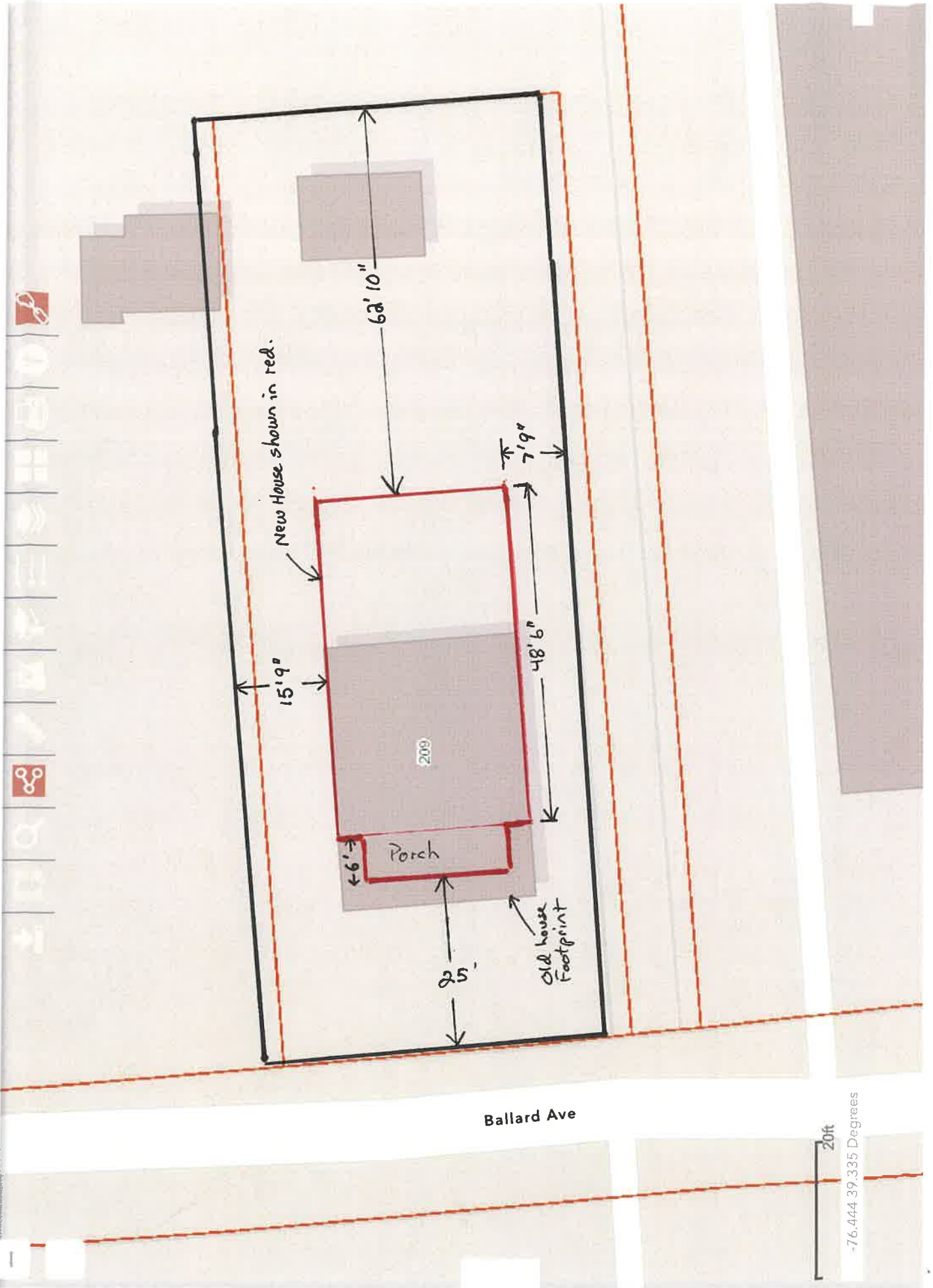
1. The Revised Site Plan (Pet. Ex. 4) and Architectural drawing (Pet. Ex. 5) are incorporated herein and made a part hereof.

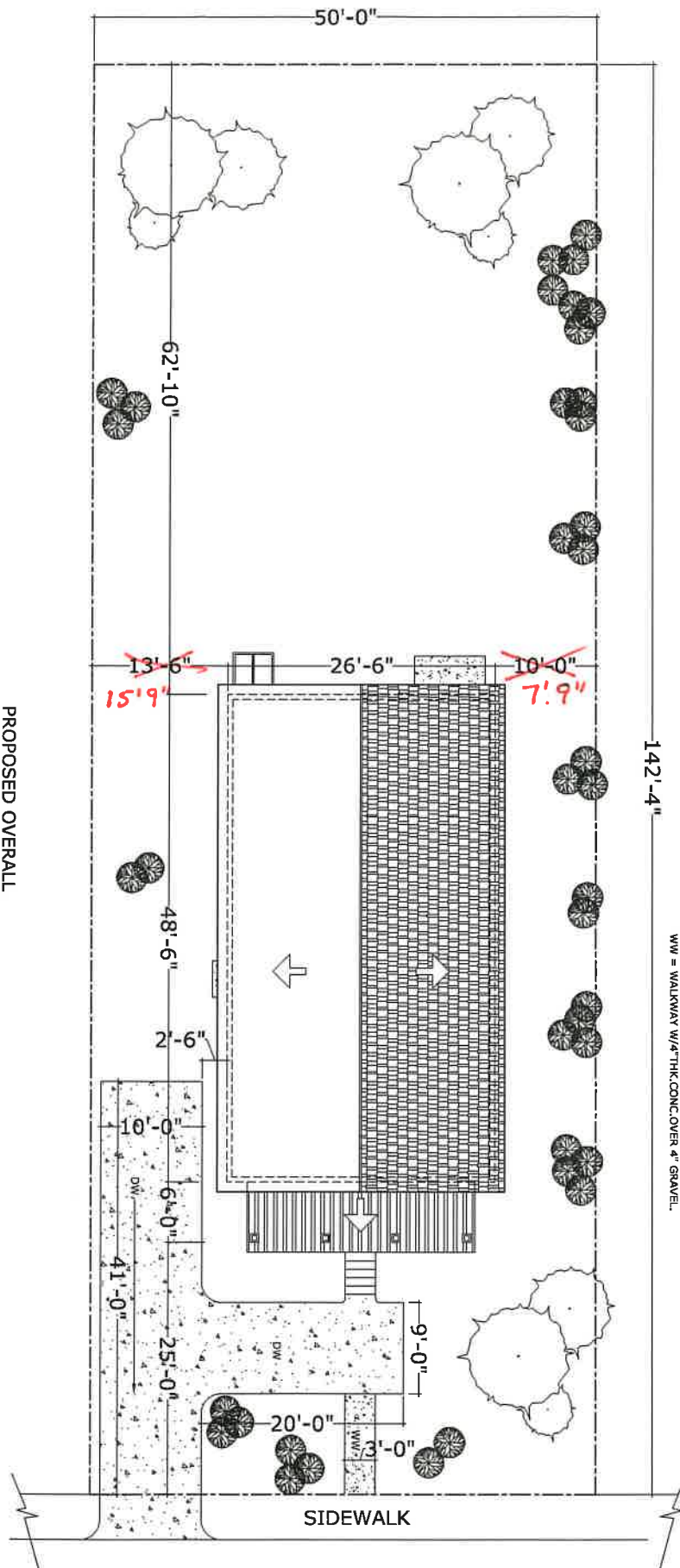
Any appeal of this decision must be made within thirty (30) days of the date of this Order.

A handwritten signature in cursive script, reading "Maureen E. Murphy".

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm





PROPOSED OVERALL
SITE PLAN
SCALE: 3/32" = 1'-0"

DW = DRIVEWAY W/6"THK CONC., 4" GRAVEL & 6X6 W/1.4XW/1.4 WWF
WW = WALKWAY W/4"THK CONC. OVER 4" GRAVEL

A-2 10-21-22	project BESSY RESIDENCE	address 209 BALLARD AVE. MIDDLE RIVER MD. 21220	owner WALTER SOMOZA
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Per Ex. 5