

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(1614 Burke Road)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Councilman District		
Patrick McCann	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2013-0255-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Patrick McCann, the legal owner of the subject property. The Petitioner is requesting Variance relief from Sections 1A04.3.B.2.b and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.): (1) to permit a street center line setback of 61 ft. and a side yard setback of 13ft. for a proposed dwelling in lieu of the required 75 ft. and 50 ft.; and (2) to permit an existing shed to be located in the side yard in lieu of the required rear yard.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Patrick McCann. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received from Department of Environmental Protection and Sustainability (DEPS) dated May 24, 2013, Development Plans Review (DPR) dated May 13, 2013, and Department of Planning (DOP) dated May 29, 2013. The DOP indicated Petitioner must satisfy the RC 5 performance standards, while DEPS & DPR noted

Petitioner must comply with Critical Area and flood protection regulations.

Testimony and evidence revealed that the subject property is approximately 0.424 acres. The property is improved with a single family dwelling that is in relatively poor condition. The Petitioner proposes to raze the existing dwelling and construct in its place a new home (approximately 30' x 50') that will be in essentially the same footprint. To do so, however, requires zoning relief.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioner has met this test. The Petitioner owns a double lot (Lots 177 & 178) of irregular dimensions that fronts onto Galloway Creek. Thus, the property is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, given he would be unable to replace the existing dwelling, which is in a state of disrepair. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of County and/or community opposition.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted

THEREFORE, IT IS ORDERED, this 26th day of June, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations ("B.C.Z.R"): (1) to permit a street center line setback of 61 ft. and a

side yard setback of 13ft. for a proposed dwelling in lieu of the required 75 ft. and 50 ft.; and (2) to permit an existing shed to be located in the side yard in lieu of the required rear yard, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln