

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(4318 Cottington Road)		
11 th Election District	*	OF ADMINISTRATIVE
5 th Councilman District		
Brian F. & Patricia McNabb	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	CASE NO. 2014-0100-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Brian & Patricia McNabb, the legal owners of the subject property. The Petitioners are requesting variance relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing rear yard freestanding deck with a zero ft. side setback in lieu of the required 2.5 ft. setback. 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 Brian F. McNabb. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Mr. & Mrs. Cahill, the next door neighbors, attended the hearing and opposed the relief.

The only Substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP) dated December 6, 2013, and it noted the County had issued a code enforcement citation against the Petitioners.

Testimony and evidence revealed that the subject property is approximately 2,357 square feet and is zoned DR 5.5. The Petitioners constructed a freestanding deck/patio area in their back yard, as shown on the site plan (Exhibit 1) and photographs (Exhibit 2). The improvements are

situated on the property line, and the adjoining neighbors filed a complaint with Baltimore County, at which time the Petitioners were advised that variance relief was needed to keep the deck in its current location.

Based upon the testimony and evidence presented, I will deny the petition for variance. 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).

Although Mr. McNabb testified extensively about the deck and other projects he also completed within the last two years in his rear yard, no testimony, evidence and/or exhibits were offered to prove the subject property is unique. This is an indispensable element of a variance case, and without evidence on this issue the petition must be denied.

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 DENIED.

THEREFORE, IT IS ORDERED, this 30th day of December, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing rear yard freestanding deck with a zero ft. side setback in lieu of the required 2.5 ft. setback, be and is hereby DENIED.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln