

IN RE: PETITION FOR VARIANCE
(1434 Galena Road)
15th Election District
7th Councilman District
Brian M. Shulman
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2014-0162-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Brian M. Shulman, the legal owner of the subject property. The Petitioner is requesting variance relief from § 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an accessory building (garage) with a height of 26' in lieu of the permitted 15'. 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 request was Petitioner Brian M. Shulman and David Billingsley with Central Drafting & Design, the firm that prepared the site plan. The Petition was advertised and posted as required by the B.C.Z.R. There were no Protestants in attendance and the file does not contain any letters of opposition.

The Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DRP) dated February 10, 2014, indicating that the base flood elevation for the site is 9.4 feet [NAVD 88], and the flood protection elevation is 10.4 feet. In addition, a ZAC comment was received from the Department of Environmental Protection and Sustainability (DEPS) dated February 18, 2014, indicating that Petitioners was obliged to comply with certain Critical Area regulations, as set forth in B.C.Z.R. Section 500.14.

Testimony and evidence revealed that the subject property is approximately 11,300 sq. ft. and is zoned D.R. 5.5. The Petitioner purchased the property this year, and would like to have additional storage space for items that cannot be kept in the single-family dwelling on site. As such, the Petitioner proposes to add a second story to an existing garage on the property. To do so requires variance relief.

Based upon the testimony and evidence presented, I will grant 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).

Petitioner has met this test. The lot is narrow (50' width) and deep (235') and was created in the 1930's before the adoption of the B.C.Z.R. Exhibit 5. Thus, it is unique.

If the B.C.Z.R. were strictly interpreted, the Petitioner would indeed suffer a practical difficulty, given he would be unable to construct the garage addition for storage of household items. 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 community and/or County agency opposition. In addition, Petitioner submitted photos showing that the adjoining neighbor also has a two-story garage, and thus the proposed addition would be consistent with the appearance of the neighborhood.

The Petitioner indicated on the plan and at the hearing that he would like to include a "powder room" (not a full bathroom) with the garage addition. Exhibit 1. As I explained, the B.C.Z.R. does not contain any prohibition upon doing so, but I believe that the Department of

Public Works (DPW) is the more appropriate agency to field such a request. There is nothing in the file indicating whether or not the existing water and sewer service to the property (or in the area) is deficient in any respect, and the engineers at DPW are better suited to make such a determination.

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 31st day of March, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an accessory building (garage) with a height of 26' in lieu of the permitted 15', 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.
- Petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, or kitchen facilities.
- Petitioners must comply with ZAC comments of the DRP & DEPS, which are attached hereto and made a part hereof.

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

JEB:dlw

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County