

IN RE: PETITION FOR VARIANCE
(1600 Holly Tree Road)
15th Election District
6th Councilman District
Steven M. Richardson
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2014-0134-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 Steven M. Richardson, the legal owner of the subject property. The Petitioner is requesting variance relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing accessory structure located in the side yard in lieu of the rear yard with a 0 ft. setback in lieu of the minimum 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 Steven M. Richardson. The next door neighbor, who was represented by John Conrad, Esquire, appeared and opposed the relief. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS) dated January 10, 2014 and from the Bureau of Development Plans Review (DPR) dated December 20, 2013.

Testimony and evidence revealed that the subject property is approximately 13,092 square feet and is zoned RC 5. The Petitioner in 2010 constructed a shed which is positioned on the

property line adjoining 1602 Holly Tree Road. The Petitioner seeks variance relief to allow the shed to remain 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).

Petitioner has not satisfied this test. In fact, no evidence or argument was presented which would establish the property as "unique." This is an indispensable element in a variance case, and the lack of evidence on the point mandates that the petition be denied.

There is another reason that zoning relief cannot be granted in these circumstances. While the foundation of the shed is apparently located on the property line, the roof structure of the shed overhangs the property owned by Mildred Reiner at 1602 Holly Tree Road. The Petitioner estimated the roof may overhang his neighbor's property by "a few inches." Even so, this is arguably a continuing trespass, and the grant of variance relief in this setting would be contrary to public policy. *Powell v. Norman Elec. Inc.*, 493 S.E. 2d 205, 206 (Ga. 1997) ("owner of the soil beneath an overhanging structure may be entitled to ejectment or an action for trespass"). In fact, Black's Law Dictionary defines a "continuing trespass" as a "trespass in the nature of a permanent invasion of another's rights, such as a sign that overhangs another's property. *Id.* at 1541 (8th ed. 2004).

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 15th day of May, 2014, 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 accessory structure located in side yard in lieu of the rear yard with a 0 ft. setback in lieu of the minimum 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