

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(321 Harlem Lane)		
1 st Election District	*	OFFICE OF ADMINISTRATIVE
1 st Councilmanic District		
Daniel W. Boer	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	CASE NO. 2014-0038-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by the legal owner of the property, Daniel W. Boer for property located at 321 Harlem Lane. The variance request is from §400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a garage in the side and rear yard of an existing single family dwelling in lieu of the rear yard.

This matter was originally filed as an Administrative Variance, with a closing date of September 9, 2013. On September 4, 2013, Emerald F. and Laurie A. Schleicher (319 Harlem Lane) requested a formal hearing on this matter. The hearing was subsequently scheduled for Thursday, October 17, 2013 at 2:30 PM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

There were no substantive Zoning Advisory Committee (ZAC) comments received.

Appearing at the public hearing in support for this case was Daniel W. and Kim Boer, legal owners. Emerald and Laurie Schleicher, neighbors, appeared and opposed the relief.

Testimony and evidence revealed that the subject property is approximately 15,750 square feet and is zoned DR 5.5. The property is improved with a single family dwelling, and

the Petitioners propose to construct a detached garage in the side and rear yards. To do so requires variance relief.

As noted at the outset, the relief requested concerns locating the garage in the side, as opposed to rear, yard. But the Petitioners own a corner lot, which is subject to an additional limitation, as set forth in the regulations: “*On corner lots they [accessory buildings] shall be located only in the third of the lot farthest removed from any street and shall occupy not more than 50% of such third.*” BCZR § 400.1. The Petitioners did not request variance relief from this requirement (which is unique to “corner lots”) and their neighbors contend this provision is not satisfied. This regulation—as evidenced by its title—concerns two things: (1) *location* of the accessory building; and (2) *percentage of lot coverage*.

As shown on the site plan, the proposed garage would be located in the “third of the lot farthest removed from the street,” so that aspect of the regulation is satisfied. The Zoning Commissioner’s Policy Manual (p. 4-1.1) provides examples of location diagrams interpreting this regulation, and it is clear that it is 1/3 of the total lot that is under consideration, as far as location is concerned. Petitioners’ lot is 15,750 square feet, which means that a “third” of the lot would be 5,250 square feet. Fifty percent of that figure would be 2,625 square feet, which is the maximum size of any permitted accessory structure. The garage proposed is 30' x 36', or 1,080 square feet, which is in compliance with this regulation.

Even so, I believe the petition for variance relief must be denied. Under Maryland law, 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).

The Petitioners did not submit any evidence or provide testimony to establish that their property is “unique” as that term is defined in the case law. This is the most important element in a variance case, and given the lack of evidence and/or argument on the point, I believe the petition must be denied. In addition, the proposed garage is nearly as large as the Petitioners’ dwelling, a point stressed by the Schleichers. In these circumstances, I am inclined to agree with the neighbors that it would appear, in essence, that a second dwelling had been added to the lot.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence, I find that Petitioners’ variance request should be denied.

THEREFORE, IT IS ORDERED, this 22nd day of October, 2013 by the Administrative Law Judge for Baltimore County, that the Petition for Variance from § 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a garage in the side and rear yard of an existing single family dwelling in lieu of the rear yard, 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