

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(4914 Berry Hill Circle)		
11 th Election District	*	OF ADMINISTRATIVE
6 th Councilman District		
Kathleen M. Austin &	*	HEARINGS FOR
Kimberly S. Harmeyer Ruark		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0314-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Kathleen Austin and Kimberly Harmeyer Ruark, the legal owners of the subject property. The Petitions are requesting Variance relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing accessory structure (shed) to be located in the side yard with a setback of 0.333' to the property line in lieu of the required rear yard and 2.5', respectively. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

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

The only Zoning Advisory Committee (ZAC) comment received was from the Department of Planning (DOP), which indicated the Petitioners' request should be denied as the proposed location of the accessory structure is not in keeping with the general neighborhood pattern.

Testimony and evidence revealed that the subject property is approximately 3,038 square feet and is zoned DR 5.5. The Petitioners indicated they were unaware of the pertinent regulations, and hired a contractor from Virginia to construct a 9' x 12' shed on the side of their end-of-group townhome. An anonymous complaint was filed, and the Petitioners were instructed to seek variance 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).

Petitioners have met this test. The Petitioners submitted photos (Exhibit 2) that show their rear yard, which is sloped and subject to frequent flooding and muddy conditions. Thus, the property is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty, given they would be unable to construct a shed in a secure location on the lot. 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 support of Petitioners' adjoining neighbors, both of whom submitted letters expressing support for the Petition. I am not unmindful of DOP's comment, but was persuaded after reviewing the photographs that special circumstances indeed exist here that justified the departure from the regulations.

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 3rd day of September, 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 accessory structure (shed) to be located in the side yard with a setback of 0.333' to the property line in lieu of the required rear yard and 2.5', respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners 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.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:dlw