

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(858 Sue Grove Road)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Councilman District		
J & M Investments, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2014-0006-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by David Billingsley, on behalf of J & M Investments, LLC, the legal owner of the subject property. The Petitioner is requesting Variance relief from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory building (garage) with a height of 24 ft. in lieu of the permitted 15 ft. 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 Mark Haynes, Member and David Billingsley of Central Drafting & Design, the firm that prepared the site plan. 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 protest or opposition

Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS) and Department of Planning (DOP). DEPS indicated Petitioner must comply with critical area regulations, and the DOP, which did not oppose the relief, requested that certain conditions be included in any final Order.

Testimony and evidence revealed that the subject property is approximately 11,600 square feet and is zoned DR 3.5. The property is improved with a small single family dwelling, two sheds and a carport. The Petitioner proposes to raze the sheds and carport, and construct in their place a two-story garage, 24' high and 704 sq. ft. To do so requires variance relief.

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

Petitioner has met this test. The waterfront lot is narrow and deep, and is essentially bisected with a county sewer and water easement. As such, the property is unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, given it would be unable to construct the proposed garage. 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 County and/or community opposition.

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 5<sup>th</sup> day of September, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Baltimore County Zoning Regulations ("B.C.Z.R") to permit an accessory building (garage) with a height of 24 ft. in lieu of the permitted 15 ft, 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 its 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, kitchen or bathroom facilities.
- Petitioners must comply with ZAC comments of the DOP & DEPS, which are attached hereto.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln