

IN RE: PETITION FOR VARIANCE
(1423 Hopewell Avenue)
15th Election District
7th Councilman District
Gary Horan
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0134-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 Gary Horan, the legal owner of the subject property. The Petitioner is requesting Variance relief from Section 400.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing shed with a side setback of 0 ft. in lieu of the required 2.5 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 request was Gary Horan. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the record of this case. There were no substantive comments from any of the County reviewing agencies.

Testimony and evidence revealed that the subject property is 2,170 square feet and is zoned DR 10.5. The Petitioner purchased the home in 2003, and constructed the shed in 2007. Although the shed has been in place for over 5 years, a complaint was recently lodged with the County’s Code Enforcement Bureau, which triggered the filing of the petition.

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).

Petitioner has met this test. The lot is extremely narrow (18'), which makes the property unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship, since he would be required to dismantle or reconstruct the 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 opposition from County agencies. In addition, the Petitioner testified that many homes in the community (of row houses) have sheds and other structures in the rear yards that do not observe the setback requirements in the B.C.Z.R.

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 14th day of February, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 400.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing shed with a side setback of 0 ft. in lieu of the required 2.5 ft., be and is hereby GRANTED.

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