

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(863 Sue Grove Road)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Councilman District		
Mark Haynes, J & M Investments LLC	*	HEARINGS FOR
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0142-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Mark Haynes, Member, 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 second story storage) with a height of 22 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 were Mark Haynes and David Billingsley, who prepared the site plan. 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 interested citizens in attendance, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the record of this case. The Department of Planning submitted a comment indicating support for the Petition, along with a request that the materials used for the garage match those used for the single family dwelling on site.

Testimony and evidence revealed that the subject property is 10,000 square feet and is zoned DR 3.5. Mr. Haynes testified that he acquired the property in 2007, at which point it was a vacant lot littered with garbage. The Petitioner constructed an attractive dwelling on the lot in 2008 (see exhibit 7A), and now desires to construct a garage in the rear yard.

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 has met the test. The property was subdivided in 1921 (known as the Sue Grove Community) long before the adoption of the B.C.Z.R. In addition, the lot is narrow and deep, as shown on the plat (Exhibit 5). These qualities make the property unique.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty and/or hardship, since they would be unable to construct the garage as planned, to provide much needed storage space for Mr. Haynes' family. 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 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 21st day of February, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an accessory building (garage with second story storage) with a height of 22 ft. in lieu of the permitted 15 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for its 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.
2. The Petitioners 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.
3. The proposed garage shall be constructed with siding and roofing materials similar to those used on the existing single family dwelling.

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