

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(1914 Van Buren Road)</b>		
12 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
4 <sup>th</sup> Council District		
Michael O’Neal, Sr.	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2015-0216-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of the legal owner of the subject property. The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §400.1 to permit an existing shed (accessory structure) with a side yard setback of 6 in. in lieu of the minimum setback of 2.5 ft. The subject property and requested relief is more fully depicted on the site plan that was marked as Petitioner’s Exhibit 1.

Owner Michael O’Neal, Sr. appeared in support of the petition. A neighbor (Julie Dembeck) attended the hearing and opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Bureau of Development Plans Review (DPR) indicating that agency does not support a setback that is less than the minimum 2 ½ feet, because it requires that the owner trespass onto the neighbor’s property for maintenance. In fact, Ms. Dembeck alleged that someone trespassed into her yard to complete the construction of the Petitioner’s shed.

This matter is currently the subject of a violation case (Case No. 69087), and a copy of the Code Enforcement file was made part of the zoning hearing file.

The subject property is approximately 4,136 square feet and is zoned DR 5.5. The property

is improved with a single family dwelling, and Petitioner has lived at the location for 18+ years. Petitioner constructed a shed which is positioned alongside the fence and property line separating the subject property from 1912 Van Buren, owned by Ms. Dembeck. A complaint was filed with the Bureau of Code Enforcement, and Petitioner was informed that variance relief is required to maintain the shed in its current location.

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).

In this case, no evidence was presented to establish that Petitioner's property is unique, and based on the photos (Exhibit 2) and site plan (Exhibit 1) it would appear as if the lot and dwelling are of a similar size and scale to those in the immediate vicinity. In addition, while Petitioner testified he prefers not to move the shed 2 ½ feet from the boundary--he indicated it may complicate matters in the future if he decides to construct a deck off of the second story of his home--it would not rise to the level of a hardship for him to do so.

THEREFORE, IT IS ORDERED, this **2nd** day of June, 2015, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("B.C.Z.R.") §400.1 to permit an existing shed (accessory structure) with a side yard setback of 6 in. in lieu of the minimum setback of 2.5 ft., be and is hereby DENIED.

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

JEB: sln

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County