

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(1105 Susquehanna Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
6 th Council District		
Jason & Mina Jackson	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2017-0178-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Jason & Mina Jackson, owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (B.C.Z.R) to permit a detached accessory structure (garage) with a height of 19 ft. in lieu of the maximum allowed 15 ft. A site plan was marked as Petitioners’ Exhibit 1.

Jason & Mina Jackson and David Billingsley appeared in support of the petition. Petitioners’ neighbors, represented by Geoffrey Washington, Esq., attended the hearing as well. 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 Department of Environmental Protection and Sustainability (DEPS). That agency noted Petitioners would need to comply with Critical Area Regulations.

The property is approximately 30,000 square feet and is zoned DR 3.5. The property is improved with a single-family dwelling and an accessory structure in the rear yard. That structure is 19 ft. in height, which exceeds the 15 ft. maximum specified in B.C.Z.R. §400.3. Petitioners last year filed a petition for variance to “legitimize” this existing building, which request was opposed by their neighbors. See Case No. 2017-0037-A. That petition was denied, and the case

was not appealed.

Petitioners now propose to relocate the shed to the other side of their property, and a revised site plan was submitted showing this revision. Petitioners have also agreed to not construct any improvements within 30 ft. of the property boundary between the subject property and their neighbors' home. The neighbors (through counsel) indicated they do not oppose the variance request under these circumstances. While the relocation of the shed (which would still be 19 ft. in height) might not constitute a "material change" in circumstances sufficient to avoid the bar of *res judicata*, the relief requested is modest and will not adversely impact the neighborhood. *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass'n.*, 192 Md. App. 719, 739-40 (2010) (discussing *res judicata* and material change in circumstances).

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have met this test. The lot is narrow and deep, and is therefore unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be required to raze or reconstruct the detached accessory structure. 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 and/or Baltimore County opposition.

THEREFORE, IT IS ORDERED, this 11th day of **April, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit a detached accessory structure

(garage) with a height of 19 ft. in lieu of the maximum allowed 15 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must within 30 days of the date hereof relocate the existing shed as shown on the redlined site plan attached as an exhibit hereto.
3. Petitioners shall not, so long as they own the property, construct any improvements within 30 ft. of the boundary line separating 1105 and 1107 Susquehanna Avenue.

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