

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S side of Timberfield Lane, 650 feet S		
of c/l of Lightfoot Drive	*	DEPUTY ZONING
3 rd Election District		
2 nd Councilmanic District	*	COMMISSIONER
(3315 Timberfield Lane)		
	*	FOR BALTIMORE COUNTY
David S. Blum		
<i>Petitioner</i>	*	Case No. 2009-0060-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, David S. Blum. Petitioner is requesting variance relief from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (windmill) with a height of 80 feet in lieu of the maximum permitted 15 feet. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.¹

Appearing at the requisite public hearing in support of the variance request was Petitioner David S. Blum. Two citizens, Ruth Goldstein and Ellen Levy, appeared in opposition to the Petition for Variance. While there were no other Protestants or interested citizens in attendance at the hearing, a number of nearby residents and neighborhood associations submitted letters opposing the requested relief. These letters, which will be explained in greater detail, were marked and accepted into evidence as Protestants’ Exhibits 1 through 6.

At the outset of the hearing, Protestants raised a preliminary issue arguing that Petitioner had not met the notice requirement since the property was not properly posted on October 14,

¹ Before reaching the merits of the variance request, Mr. Blum proposed an amendment to the site plan to move the location of the proposed windmill farther south on the property, near the marking in the center of the southern section of the property stating “owned by David S. Blum.” Since this amendment did not change the nature of the variance request, and the requested relief remained the same, Mr. Blum was permitted to proceed with the petition as amended.

2008, fifteen days prior to the public hearing. However, the case file reflects that Richard E. Hoffman, who is an approved sign poster, certified under the penalties of perjury that the property had been posted at least fifteen days prior to the scheduled public hearing. After weighing the evidence, I found that Petitioner had met his notice requirement by conspicuously posting notice of the upcoming hearing on the subject property. Consistent with the Court of Appeals standard, the sign provided notice that alerted interested parties to defend their interest and described the nature of the request at issue before the Zoning Commissioner. *See Cassidy v. Board of Appeals of Baltimore County*, 218 Md. 418, 421-2 (1958). Furthermore, actual notice of the public hearing was evidenced by the attendance and participation of various Protestants at the public hearing, along with the large number of opposing letters contained in the case file. *See Largo Civi Ass'n v. Prince George's County*, 21 Md. App. 76, 86 (1974). Thus, the public hearing was permitted to proceed.

Testimony and evidence offered revealed that the subject property is an irregular-shaped property containing approximately 0.98 acre of land zoned D.R.2. The property is located south of Timberfield Lane, immediately east of Pikesville Middle School, in a residential neighborhood in the Pikesville area of Baltimore County. The property, similar to many parcels in the surrounding area, is improved with a one-story brick rancher style home. The home also contains an addition with an indoor swimming pool. Mr. Blum testified that the property is actually made up of two parcels, and he purchased the area marked "parcel A" on the site plan from Baltimore County in 1984. Together, the two parcels comprise approximately one acre.

Further testimony revealed that Mr. Blum is seeking to reduce his energy costs, which are apparently higher than average due to the maintenance of an indoor swimming pool and Mr. Blum's hobby of model railroading with toy trains. Mr. Blum indicated that he believes his

proposed windmill is a first step in what he hopes will be a larger effort -- participated in by more and more citizens -- to find and utilize more innovative, cost effective, and environmentally responsible energy sources. He is hopeful that permitting the proposed windmill will have far-reaching, positive consequences in the surrounding area. Mr. Blum also testified that the location of the proposed windmill is ideal due to the "natural wind tunnel" that is created by a gap in the trees toward the rear of his property. According to Mr. Blum, the windmill would be sheltered on three sides by trees and would not easily be visible to neighbors.

Protestants were represented at the hearing by Ms. Goldstein and Ms. Levy, each of whom testified in opposition to the variance request. Ms. Goldstein, President of the Midfield Association, Inc., presented a two-page letter opposing the variance for a number of reasons. The letter, which was marked and accepted into evidence as Protestants' Exhibit 3 and was essentially read into the record, reflected the neighbors' concerns that the windmill would be incompatible, unsafe, and premature due to the fact that the Baltimore County Planning Board is in the process of providing comments to the County Council on the issue of windmills. Similar concerns were expressed in letters from interested citizens Noel Levy; Rebecca Gutin; Alan Zukerberg, President of the Pikesville Communities Corporation; Arthur Putzel, President of the Pikesville-Greenspring Community Coalition, and Karen and David Whitehead. These letters were respectively marked and accepted into evidence as Protestants' Exhibits 1, 2, 4, 5, and 6.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated September 29, 2008, which indicate that the property is in a residential neighborhood inside the Urban Rural Demarcation Line. The site is located east of Pikesville Middle School and has single-family detached units to the east and north. With an 80 foot tower, the residence at 3313 Timberfield

Lane would be impacted should the tower fail and fall. County Council passed Resolution 52-08 asking the Planning Board to prepare a report addressing the issue of wind turbines. At its September 4, 2008 meeting, the Planning Board acknowledged that request and asked the Office of Planning staff to prepare a report on wind turbines. Without clear guidance on how and where wind turbines should be sited and the potential impact to the adjoining property, the Office of Planning recommends denial. When clear guidance has been established, the Office of Planning will evaluate each request fairly and consistently.

As the Office of the Zoning Commissioner determined in previous Case number 08-474-A, which was the first request for variance to permit a windmill in Baltimore County, given the B.C.Z.R. framework that presently governs Petitioner's request to construct a windmill, the Petition was appropriately filed as a request for an "accessory structure." The determination that windmills qualify as accessory structures will not be revisited in this case. Thus, the only remaining issue is whether the requested variance should be granted for the proposed accessory structure. Section 307.1 of the B.C.Z.R. states in pertinent part that:

The Zoning Commissioner of Baltimore County ... shall have and [is] hereby given the power to grant variances from height and area regulations ... only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

For the following reasons, and after considering all of the testimony and evidence presented, I am not persuaded that the requested relief should be granted.

Initially, I cannot find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The property lies in a residential neighborhood filled with similar sized properties, many of which are improved with houses of a similar size and nature to Petitioner's. In short, Petitioner did not present sufficient

evidence to support a conclusion that the property is unique in a zoning sense, or that there are unique characteristics of the property that drive the need for the variance.

Additionally, I am not convinced that the imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district, and I cannot find that the denial of this variance would cause Petitioner any undue burden or expense. Section 400.3 appears to affect the subject property in the same manner as the surrounding properties, and any undue financial burden caused by the maintenance of an indoor pool and toy train hobby appears self imposed.

Finally, at this juncture, I cannot find that this variance could be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to meet the requirements of Section 307.1 of the B.C.Z.R, as set forth in *Cromwell v. Ward*, 102 Md.App. 691 (1995). While I have great respect for Petitioner's request to forge new ground in the growing field of alternative, renewable energy, and I believe that the interpretation of the B.C.Z.R. must be enduring and responsive to novel and innovative approaches that account for changes in technologies and the unpredictable global dynamics of the world, I cannot find any legal or practical basis for approving a windmill on this particular property. The size of the subject site, the potential size of the wind turbine and the height of the tower in relation to its proximity to other homes in the neighborhood and a nearby school, and Petitioner's lack of specificity regarding the type of wind turbine proposed, leads me to the conclusion that this property does not lend itself to such a substantial accessory structure. Accordingly, the Petition for Variance is denied.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioner's variance request should be denied.

THEREFORE, IT IS ORDERED this 24th day of November, 2008 by this Deputy Zoning Commissioner, that Petitioner's Variance request from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (windmill) with a height of 80 feet in lieu of the maximum 15 feet allowed, be and is hereby DENIED.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz