

IN RE: **PETITION FOR ADMIN. VARIANCE** * BEFORE THE
NW/Side of Gunpowder Road, 720' ZONING COMMISSIONER
N c/line of Glen Arm Road * OF
(10 Gunpowder Road)
11th Election District * BALTIMORE COUNTY
3rd Council District *
Robert W. Evett * **Case No. 2009-0108-A**
Petitioner *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Administrative Variance filed by the owner of the subject property, Robert W. Evett. The Petitioner requests a variance from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (shed) to be located in the side yard in lieu of the required rear yard. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

This case was originally filed as an Administrative Variance, pursuant to Section 32-3-303 of the Baltimore County Code. That Section allows an individual to seek variance relief for an owner-occupied residential property without a formal hearing, provided certain conditions are met. First, the property is duly posted and advertised giving public notice of the requested relief. Under the Code, any property owner residing within 1,000 feet of the property in question can request a public hearing within fifteen (15) days of the sign posting, if that person objects to the relief requested. If no hearing is requested, the matter can be considered and an Order issued by the Zoning Commissioner/Deputy Zoning Commissioner, based on the documentation contained in the file.

In this case, the property was duly posted and within the requisite time period Lisa B. Culp, residing at 8 Gunpowder Drive, filed a request for a formal demand on November 3, 2008. Thus, this matter was scheduled for a public hearing, which was held on December 15, 2008.

Appearing at the requisite public hearing in support of the request were Robert W. Evett, property owner, his daughter and son-in-law, Suzanne and Richard Jenkins, who reside on the property, and their attorney, Howard L. Alderman, Esquire. Appearing in opposition to the variance request were Lisa B. Culp, the adjacent neighbor at 8 Gunpowder Road and her father, Larry Butz.

Testimony and evidence offered disclosed that the subject property is rectangular in shape (165' wide x approximately 347' deep) located between the north side of Gunpowder Road and the south side of Glen Arm Road just north of Cromwell Bridge Road in Glen Arm. The property contains a lot area of 1.41 acres or 61,420 square feet, zoned R.C.5 and is improved with a one-story single-family dwelling with attached garage originally built in 1952 and subsequently remodeled. The Petitioner has owned and resided on the property for many years. Due to advancing age he requested his daughter and her family to move in and provide support and assistance. Testimony indicated that the proposed shed, 16' x 20' in dimension, in the rear side yard (northwest side of property) is necessary to provide needed space for the safe and secure storage of a garden tractor, garden equipment and personal items. Testimony and photographs submitted show that the rear yard is moderately wooded and steeply sloped. Thus, the proposed accessory structure cannot be located in the rear yard as required by the regulations. Moreover, due to the location of the existing home and site constraints (underground electric service, well and septic) associated with the property, the requested variance relief is necessary.

In this regard, the home sits centrally on the lot towards the base of a hill, approximately 147' from Gunpowder Road, and thus only has level ground on either side of the home and front yard area. Mr. Jenkins, a home improvement contractor with extensive experience in construction, described the topography as composed of steep slopes and testified that the rear yard is virtually unusable for building purposes. He presented elevation drawings of the proposed structure that he intends to build stating it will be custom built with siding and roof exterior colors that will match the house.

In support of the request, the Jenkins submitted numerous photographs depicting similarly located sheds throughout the immediate area erected in the side/front yards (Petitioner's Exhibits 4A through 11C). They produced letters from a real estate attorney and real estate broker expressing opinions that the structure would have no adverse effect on property values in the neighborhood and would not adversely impact adjacent properties. While photographs submitted support Petitioner's contention and show many sheds erected over time they must have been done so in disregard of the zoning regulations.¹

Lisa Culp, the most affected adjacent neighbor, and Larry Butz appeared in opposition to the proposal. Essentially, they opine that while the proposed accessory structure might be, in the opinion of Messrs. Evett and Jenkins, compatible and fitting with the subject property, the placement of this shed as intended in the side yard 28' from her patio and 47' east of her dining room in an area that is elevated 5' higher than her property, would be inappropriate. She testified that it would impair the enjoyment of her property, fears her property value would be depreciated, and be inconsistent with the residential character of the area and the R.C. 5

¹ It is worthy to note that this Commission could find no prior Orders granting variance relief from B.C.Z.R. Section 400.1 for any of the sheds illustrated on Petitioner's Exhibits 4-11. The only Order issued involving an accessory structure pertained to 20 Gunpowder Road, Case No. 88-447-A, and this petition involving an accessory structure (shed) in the side yard in lieu of the required rear yard was denied by then Zoning Commissioner J. Robert Haynes on May 28, 1988.

zoning classification. She submitted photographs as Protestant's Exhibit 1 to demonstrate that the location of the structure would be clearly visible from her perspective.

Following the hearing, I visited the subject site and drove the community. Observations made during that visit are particularly relevant in reaching the conclusion that variance relief is warranted; however, I will grant a modification of the relief requested. I will grant a variance to allow for a location that will be a greater distance than 10' from the property and require alterations to the plan. Specifically, the Petitioner shall amend his plan so as to depict the shed's location a distance of twenty (20) feet from the common property line (10 feet closer to Petitioner's home than currently proposed). Additionally, the plan will provide for moving the shed further back towards the base of the hill (further back from Gunpowder Road than as shown on Exhibit 1). The north end of the shed shall be located next to the BGE underground electric utility line. A landscape screening area 6' wide and 20' deep shall be provided on the western side of the shed to buffer its view from Ms. Culp's property. These plantings, weather permitting, shall take place within thirty (30) days following the shed's construction.

In reaching a decision based on the testimony and evidence presented, I must consider the request in accordance with the mandate of *Cromwell v. Ward*, and Section 307 of the B.C.Z.R. in determining whether I think the shed's location is appropriate. The Court interpreted the regulation to require that two tests be met in order for variance relief to be granted. First, it must be shown that the property is unique in some manner and that this uniqueness drives the need for variance relief. In this case, I find that the environmental constraints are so severe that the Petitioner is not able to build an accessory structure which he desires as the topography drives the need to locate the shed in the rear side yard. Secondly, upon this determination that

the property is unique, it must be considered whether compliance with the regulation would cause a practical difficulty upon the property owner and would be unnecessarily burdensome. Admittedly it is possible to compel the Petitioner to place the shed behind the garage on the northeast side, but compliance with B.C.Z.R. Section 400.1 is not practical given these facts as gaining access to it at this location is not possible. While the altered placement of the shed is perhaps not the most aesthetically desirable, I find the variance relief will not have adverse impacts on the surrounding community. For these reasons, I will grant the Petition for Variance with the above-noted conditions.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted with conditions.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 30TH day of December, 2008 that the Petition for Administrative Variance seeking relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (shed) to be located in the side yard in lieu of the required rear yard, in accordance with Petitioner's amended site plan received as Exhibit 15, be and is hereby GRANTED, subject to the following conditions which are conditions precedent to the relief granted:

1. Petitioner shall submit a revised site plan to this Commission incorporating the modified relief granted herein for inclusion in the Department of Permits and Development Management case file. Specifically, the revised site plan shall reflect the measurements of the proposed shed to be relocated further back in the west side yard at a distance of 20 feet east of the property line and show evergreen screening to mitigate the impact of the accessory structure from the adjacent residential property. The initial plantings of four or five Leyland Cypress or conifers shall be 4' to 6' tall and grow a minimum height of 20' and be maintained in good condition.

2. The Petitioner may apply for his building permit and be granted same; however, the Petitioner is hereby made aware that proceeding at this time is at his own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

Any appeal of this decision must taken in according with Section 32-3-41 of the Baltimore County Code.

WJW:pz

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County