

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
SW corner of Emory and Parrish Road		
4 th Election District	*	DEPUTY ZONING
3 rd Councilmanic District		
(5616 Emory Road)	*	COMMISSIONER
Myron N. Almony, Jr. and	*	FOR BALTIMORE COUNTY
Judith A. Almony		
<i>Petitioners</i>	*	Case No. 2009-0118-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Myron N. Almony, Jr. and Judith A. Almony, the legal property owners of the above-captioned property. Special Hearing relief is requested in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow the continued use of permitted storage buildings to house recreational trailers and motor homes in an R.C.2 (former R.D.P.) Zone. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief was Petitioner Myron N. Almony, Jr. and his attorney, Lawrence M. Hammond, Esquire. Also appearing in support of the requested relief was Bruce Doak with Gerhold Cross & Etzel, Ltd., the registered property line surveyor who prepared the site plan, and A.W. Shockney, a witness who has utilized the subject location for storage of a recreational vehicle. There were no Protestants or other interested citizens in attendance at the hearing.

This matter is currently the subject of an active violation case (Case No. 08-0665) in the Division of Code Inspections and Enforcement. Citations for code violations were issued in this matter due to the alleged illegal storage of recreational vehicles, trailers, boats and commercial vehicles, operating a home occupation, failure to cease said operation, and failure to remove

commercial vehicles from the property, in violation of the B.C.Z.R. A hearing was scheduled before the Code Enforcement Hearing Officer and an Order was issued on June 10, 2008 sustaining the violations and imposing a civil penalty in the amount of \$2,500.00. Thereafter, Petitioner filed the instant Petition for Special Hearing relief in order to legitimize the storage of recreational vehicles and motor homes in the existing storage buildings on the property.

It should be noted that the fact that Code Enforcement violations are issued is generally not relevant to the underlying zoning case. This means that Petitioner cannot use the fact that a structure has been built or a use has continued over a period of time to set a precedent for it to continue. Nor does the fact that a structure may be costly to remove or modify or that a discontinued use may impact Petitioner financially come into consideration of the zoning case. Conversely, the fact that a structure may have been built or a use may have occurred which could violate the regulations is not held against Petitioner in deciding the underlying zoning case as some sort of an additional punishment. Code enforcement is conducted by the Department of Permits and Development Management, which has the authority to impose fines and other penalties for violation of law. This office is charged with deciding only the discreet legal and factual issues associated with the zoning case.

As to the instant matter, the testimony and evidence offered revealed that the subject property is an irregular-shaped property consisting of approximately 13.13 acres, more or less, zoned R.C.2. As a precursor to the R.C.2 Zone, the property was previously zoned R.D.P. as delineated in the 1975 Regulations. R.D.P. was an abbreviation for “Rural: Deferred-Planning” and had a purpose similar to the present R.C.2 Zone; that is, to “[p]revent untimely urban development of relatively open land,” and to “[f]oster conditions favorable to agriculture and other low-intensity uses appropriate in rural areas.”¹ The subject property is located on the

¹ See, Baltimore County Zoning Regulations (as amended through October 10, 1974), 1975 Edition.

northwest side of Emory Road, adjacent on the north side of the property to Parrish Road, west of Route 30 Hanover Pike in the Upperco area of Baltimore County. As shown on the site plan, the property is improved with Petitioner's two-story single-family dwelling, as well as a number of additional storage buildings.

According to the deeds that were marked and accepted into evidence as Petitioner's Exhibits 2 and 3, respectively, the subject property was acquired by Petitioner and his father in 1967. In 1979, Petitioner's father conveyed a one-half interest in the property to Petitioner and his then-wife, Judith Almony, and in 2001, the remaining interest in the property was conveyed to Petitioner and Judith Almony. The existing dwelling was built in 1920 and is Petitioner's current residence. Since Petitioner and his father purchased the property in 1967, the buildings have been used to store vehicles and farm and/or landscaping equipment. During approximately the last three years, Petitioner has stored recreational vehicles and trailers belonging to others in the buildings and has charged what he described as a nominal storage fee. The buildings provide cover only for the vehicles, as there is no running water or electricity in the buildings.

Except for the dwelling, storage buildings, and access driveway, the property consists mostly of open space. An aerial photograph marked and accepted into evidence as Petitioner's Exhibit 4 depicts the subject property and surrounding areas as primarily rural and agricultural farmland. A similar photograph with closer detail that was marked and accepted into evidence as Petitioner's Exhibit 5 also shows the subject property with mature tree lines along the southern and northern boundaries.

In support of the special hearing request, Mr. Doak, Petitioner's land surveying consultant, testified that the storage buildings and the recreational vehicles and trailers stored therein are well buffered by the tree lines to the south and north, and that the storage buildings themselves are not unusual for this agricultural area and are actually well maintained and in

better condition than one might usually find on a farm. In addition, Mr. Doak indicated that the property is still used for agriculture. The rear portion of the property, behind the storage buildings, is currently leased to Coldbottom Farms for farming and crops. Finally, Mr. Doak indicated that the use of the buildings for storage of recreational vehicles and trailers meets all the criteria set forth in Section 502.1 of the B.C.Z.R. and, specifically, would not be detrimental to the health, safety, or general welfare of the locale, would not result in any adverse environmental issues (no underground storage of fuel tanks or the like), no views of atypical structures on the property, and would not be inconsistent with the property's zoning classification. Mr. Doak introduced photographs of the property that were marked and accepted into evidence as Petitioner's Exhibits 7A through 7L. These photographs show Petitioner's dwelling and the buildings used for recreational vehicle and trailer storage. The property appears to be well maintained and the buildings also appear to be in good shape, with the vehicles and trailers stored in "bays" within the buildings. No doubt, the area is well organized and orderly.

Also providing testimony in support of the requested relief was A.W. Shockney of 307 Bond Avenue in Reisterstown. Mr. Shockney indicated that he has stored a recreational vehicle on the property and does not believe the storage of these vehicles in such a secluded area, with virtually no views from the road or adjacent properties, to be contrary to the rural character of the property.

Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office Planning dated December 1, 2008 which indicate that they do not oppose Petitioner's request. Along the southern boarder of the property are large mature trees that buffer the view of the closest neighbors. There appears to be no negative impacts on the surrounding community. The also direct Petitioner to revise the site

plan and label structures to show storage buildings rather than “1 story dwelling with siding” and identify the single dwelling on the site.

This is a difficult case to decide because based on the facts themselves, it appears that Petitioner’s use is reasonable; however, it is my review of the applicable R.C.2 Regulations that denies Petitioner safe harbor for his continued use of the buildings for storage of recreational vehicles and trailers. After considering all the testimony and evidence presented, I am persuaded to deny the requested relief. On the one hand, I can certainly understand Petitioner wanting to utilize the existing buildings for a useful purpose. It appears the buildings may have been used in the past for storage of equipment related to agricultural uses of the property. It also appears that the storage use of these buildings has “evolved” over time to the point now where Petitioner stores recreational vehicles and trailers. On the other hand, I am bound by the clear wording and interpretation of the Zoning Regulations and it is clear that, as with the previous R.D.P. zoning years ago, the purpose of the current R.C.2 Zone is “to foster conditions favorable to a *continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.*”² (emphasis added).

In my view, I cannot reconcile the storing of recreational vehicles and trailers (which is essentially for a commercial purpose) with the preferred agricultural uses in the R.C.2 Zone. Although Mr. Doak argues that the storage of vehicles in the buildings, whether they be farm vehicles from previous days or recreational vehicles today, presents a distinction without any practical or appreciable difference, I believe it is more significant than that, and I find that Petitioner’s storing of multiple recreational vehicles is not consistent with the property’s R.C.2 Zoning, and does not meet any of the permitted storage allowances set forth in Sections 415 and

² See, Section 1A01.1.B of the B.C.Z.R.

415A of the B.C.Z.R. Hence, I do not believe Petitioner's request is within the spirit and intent of the Zoning Regulations and cannot grant the requested relief in this instance.³

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 Petitioners' request for special hearing should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 13th day of February, 2009 that Petitioner's request for Special Hearing relief filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow the continued use of permitted storage buildings to house recreational trailers and motor homes in an R.C.2 (former R.D.P.) Zone be and is hereby DENIED; and

IT IS FURTHER ORDERED that, consistent with the above, Petitioner shall cease and desist from the storage of such vehicles and shall, at Petitioner's cost and expense, remove the said recreational trailers and motor homes currently stored on the property within the next ninety (90) days.

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

³ Because of the gradual evolution over the years of the use of land in the north County from purely agricultural farmland to residential development and other uses, perhaps this is a legislative issue that Petitioner might pursue with the County Planning Board and County Council in order to specify storage of multiple recreational vehicles and trailers in buildings that were once used for similar storage of farm equipment and vehicles.