

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE * BEFORE THE
W side of Gent Road, 355 feet W from * DEPUTY ZONING
the c/l of Billy Barton Circle * COMMISSIONER
8th Election District *
3rd Councilmanic District * FOR BALTIMORE COUNTY
(12916 Gent Road)

JGS, LLC *
Petitioner * **Case No. 2009-0233-SPHA**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by James G. Sakellaris on behalf of the legal owner of the subject property, JGS, LLC. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing non-conforming barn to be used as either a barn or otherwise as an accessory structure 26 feet in height, which is larger or equal to the footprint of the existing house, and to remain on Lot 1 of Petitioner's subdivision known as the Waters Property. In the alternative, Petitioner is requesting Variance relief to permit an existing accessory structure (barn), if not subject to Section 300.1 of the B.C.Z.R., to be 26 feet in height in lieu of the permitted 15 feet, and to confirm that the barn may remain on Lot 1 of Petitioner's subdivision known as the Waters Property, although larger or at least equal to the footprint of the existing house. 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 relief on behalf of Petitioner JGS, LLC were Arnold Jablon, Esquire, attorney for Petitioner, and Paul Lee, a professional engineer with Century Engineering, who prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is rectangular-shaped and contains approximately 1.219 acres, more or less, zoned R.C.5. The property is located on the west side of Gent Road, near its intersection to the north with Shawan Valley Lane and west of Falls Road, in the Cockeysville-Hunt Valley area of Baltimore County. The property is improved with an existing single-family dwelling situated fairly close to Gent Road, as well as an existing garage and shed. The property is also improved with an existing barn structure located near the rear of the property. There is also a forest conservation easement located to the rear of the property.

The subject property was part of the “Waters Property” development in 2000 that subdivided the property into Lots 1, 3, 4, 5, and 6. As part of the development plan, new homes were to be built on those lots with the exception of the subject property -- Lot 1. Lot 1 would retain its existing improvements. In 2001, the lots were sold and homes constructed on Lots 3, 4, 5, and 6. In 2008, a 3rd Amended Final Development Plan was prepared in order to add Lot 2 back into the plan, as well as a proposed dwelling, well area, and septic reserve area for Lot 2. A copy of the 3rd Amended Final Development Plan was marked and accepted into evidence as Petitioner’s Exhibit 2 and shows that each of the nearby lot owners signed off on the Plan.

The relief requested in the instant Petitions seeks to legitimize the existing barn as either legally nonconforming or as an accessory structure and with a 26 foot height that is larger or equal to the footprint of the existing home. As shown on the SDAT printout that was marked and accepted into evidence as Petitioner’s Exhibit 3, the home and the barn have been in their present locations since at least 1917. Indeed, the Comprehensive Zoning Maps from 1971 and 2004 that were marked and accepted into evidence as Petitioner’s Exhibits 4 and 5, respectively, show the existing dwelling and barn improvements. Photographs of the barn were also marked and accepted into evidence as Petitioner’s Exhibits 6A through 6D. The photographs show a rather

aged barn with a brick and block foundation and wood frame and roof shingles. The barn appears to be functional for storage of lawn and maintenance equipment, though it is obvious from the photographs that the barn is in need of some repairs, the extent of which is not completely discernable from the photographs. In any event, Petitioner desires to keep the barn and, based on its degree of structural soundness, use it for storage purposes.

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 March 30, 2009 which indicates that the Office of Planning does not oppose the barn remaining provided it is not used as a residence and is not used for commercial purposes. The barn's roof also appears to be in disrepair and should be repaired. Petitioner's counsel, Mr. Jablon, responded that the barn would not be used as a residence or for commercial purposes; rather, it would be used as an accessory structure for the existing home.

Turning first to the Petition for Special Hearing, I am persuaded to grant the relief. Based on the age and appearance of the barn and the records that indicate it has existed on the property since at least 1917 -- far before the adoption of the Zoning Regulations -- I find that the barn as it now exists is legally nonconforming. Hence, I shall allow the 26 foot high barn which is larger or equal to the footprint of the existing home to remain. Petitioner has agreed that the barn has not been used as a residence nor for commercial purposes, and shall not be used for those purposes in the future; the barn shall be used as an accessory structure and I shall impose conditions that reflect such a continued use. As to the variance request, in granting the special hearing, the request for variance relief is now moot.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner's special hearing request should be granted and the variance request dismissed as moot.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 3rd day of June, 2009 that Petitioner's Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing non-conforming barn to be used as either a barn or otherwise as an accessory structure 26 feet in height, which is larger or equal to the footprint of the existing house, and to remain on Lot 1 of Petitioner's subdivision known as the Waters Property be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's Variance requests be DISMISSED as MOOT.

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that it may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner or subsequent owners shall not use the existing non-conforming barn as a dwelling unit or apartment, nor shall it be used for commercial purposes. The barn shall not contain any sleeping quarters, living area, kitchen or bathroom facilities. Such use is limited to that which is permitted as an accessory structure.

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