

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
SE side of Philadelphia Road, 760 feet NE		
of c/l of Cowenton Ave. and Ebenezer Rd.	*	DEPUTY ZONING
11 <sup>th</sup> Election District		
5 <sup>th</sup> Councilmanic District	*	COMMISSIONER
(10835 Philadelphia Road)		
	*	FOR BALTIMORE COUNTY
Dennis and Dorette Davies		
<i>Petitioners</i>	*	<b>Case No. 2009-0281-A</b>

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**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 owners of the subject property, Dennis and Dorette Davies. Petitioners are requesting Variance relief as follows:

- From Sections 250.1 and 250.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 60 feet between buildings (existing shed and new warehouse) in lieu of the required 80 feet; and
- From Section 250.2 of the B.C.Z.R. to permit a side yard setback of 15 feet with a sum of 30 feet in lieu of the required 30 feet and 80 feet, respectively, for a new warehouse; and
- From Sections 250.2 and 250.5 of the B.C.Z.R. to permit a side yard setback of 5 feet and a setback of 5 feet from a residential zone line in lieu of the required 30 feet and 100 feet, respectively, for an existing shed; and
- From Section 250.4 of the B.C.Z.R. to permit a setback of 0 feet for an existing shed from a residential zone line in lieu of the required 100 feet.

The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests was Petitioner Dennis Davies. Also appearing was David Billingsley with Central Drafting and Design, Inc., the land use consultant assisting Petitioners in the variance process. There were no Protestants or other interested person in attendance at the hearing.

Testimony and evidence proffered revealed that the subject property is a rectangular-shaped property consisting of approximately 1.34 acres or 58,371 square feet, more or less, split-zoned M.L.R. (.83 acres) and R.O.A. (.51 acres). As shown on the site plan, the property is located on the east side of Philadelphia Road, north of the intersection of Ebenezer Road and Philadelphia Road and northwest of Pulaski Highway, in the White Marsh area of Baltimore County. The property is improved with an existing two-story office building in the R.O.A. Zone and a shed located behind the office building in the M.L.R. Zone. Petitioner testified that when he purchased the property in 2003, the front portion of the property currently zoned R.O.A. was zoned D.R.3.5. However, during the last Comprehensive Zoning Map Process (C.Z.M.P.) in 2008, Petitioner successfully petitioned to have the zoning changed from D.R.3.5. to R.O.A. This enabled Petitioner to convert the two-story existing dwelling on the front portion of the property into its current use as an office building for Petitioner's electrical contracting business<sup>1</sup>. Petitioner also noted that the current shed replaced an old, dilapidated shed that had fallen down in 2003. The new shed was built on the same footprint as the prior shed. At this juncture, Petitioner's requests for relief are within the area of his property zoned M.L.R.

Petitioner further testified that he desires to build a new one-story warehouse building toward the rear of this property to enhance the use and functionality of his property and to allow for the storage of electrical contracting inventory, company vehicles, and other items associated with his business. Mr. Billingsley added that the proposed location of the warehouse is the most practical given the site constraints and the fact that placing the warehouse on any other portion of the site would result in an overall increased infringement on the setback requirements of the B.C.Z.R. Further, as shown in the photograph that was marked and accepted into evidence as

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<sup>1</sup> Petitioner owns and operates Emergency Power Services, Inc., which provides large-scale, back-up power protection services. Emergency Power Services, Inc., was incorporated in Maryland in 1990. The company's normal hours of operation are Monday thru Friday, 8 a.m. – 5 p.m. There are only 4-5 employees on the site during the day, as most of the work for the company occurs off-site.

Petitioners' Exhibit 4A, the warehouse would allow the storage containers currently on the property to be removed and placed inside the proposed building, subsequently improving the aesthetics of the property. Moreover, the warehouse would be pre-fabricated, like the current shed, and in the same style and color of the converted dwelling and shed. The existing shed is located 5 feet from the property line of Allstate Sheet Metal, Inc. to the south, and given the ingress and egress to the property and the site constraints of the property, is the most feasible location for the shed. Between the proposed warehouse and shed is an existing gravel parking area that will be paved over. This area is depicted in the photographs that were marked and accepted into evidence as Petitioners' Exhibits 4A through 4C. Petitioner and Mr. Billingsley indicated that this is the most practical location for the parking area due to the ingress and egress for the property, site constraints, and a desire to keep the parking area out of view from Philadelphia Road. In addition to the sheet metal plant to the south of the property, another commercial use -- Lite House Enterprises, Inc., an electrical contracting business -- is located to the north of the property. As shown on the site plan, both adjoining properties are improved with warehouses similar to that which is proposed by Petitioner, and no opposition to the relief requested was received from any of these adjoining property owners.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Resource Management (DEPRM) dated June 3, 2009 which indicates that development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains, if there are streams, wetlands or floodplains on or near the site that would require a buffer on the site. Development of the property must comply with the Forest Conservation Regulations.

Considering all the testimony and evidence presented, I am persuaded to grant the

variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I find that the constraints of the site, the location of the existing improvements, and the configuration of the driveway render the property unique in a zoning sense. I also find that strict compliance with the Zoning Regulations would result in practical difficulty and undue hardship in that Petitioner would not be able to erect the warehouse building, otherwise permitted by the B.C.Z.R., for his prospering electrical contracting business. The warehouse would improve the aesthetics and maintenance of the subject property. Finally, I find that this variance can be granted in strict harmony with the spirit and intent of the zoning regulations and in such a manner as to meet the requirements of Section 307 of the B.C.Z.R. Further, a warehouse is a reasonable use in a M.L.R. Zone pursuant to Section 248.1.A.1 and as listed in Section 241.1, and a property owner has a common law right to use his property in a manner so as to realize its highest and best use. *See, Aspen Hill Venture v. Montgomery County Council* 265 Md. 303 (1972). It appears that the warehouse will be in character with the existing office building and shed, improve the aesthetics of the land, and not have any apparent adverse impacts on the surrounding properties and community.

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' variance requests should be granted.

THEREFORE, IT IS ORDERED this 14<sup>th</sup> day of July, 2009 by this Deputy Zoning Commissioner, that Petitioners' Variance requests as follows:

- From Sections 250.1 and 250.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 60 feet between buildings (existing shed and new warehouse) in lieu of the required 80 feet; and
- From Section 250.2 of the B.C.Z.R. to permit a side yard setback of 15 feet with a sum of 30 feet in lieu of the required 30 feet and 80 feet, respectively, for a new warehouse; and

