

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W side of Wagners Avenue; 2150 feet		
NW of the c/l Easter Avenue	*	DEPUTY ZONING
15 th Election District		
7 th Councilmanic District	*	COMMISSIONER
(62 Wagners Avenue)		
	*	FOR BALTIMORE COUNTY
Thurman and Lisa Huhn		
<i>Petitioners</i>	*	
	*	CASE NO. 2009-0309-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 owners of the subject property, Thurman and Lisa Huhn. Petitioners are requesting Variance relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing detached accessory structure (shed) to be located on the side of a dwelling with a 0 foot setback in lieu of the required rear and 2 ½ feet, respectively. 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 were Petitioners Thurman and Lisa Huhn. Appearing in opposition of the request was Ms. Sherian Radtke, resident of 64 Wagners Avenue and adjacent neighbor of Petitioners. There were no other Protestants or interested citizens in attendance.

It should be noted that this matter came before me as a result of a Code Enforcement Correction Notice that was issued to Petitioners on May 6, 2009 in response to a complaint filed by Ms. Radtke, for constructing a shed in the side yard without a permit¹.

¹ Case No: CO-0059744

Testimony and evidence offered revealed that the subject property is a rectangular-shaped property that is zoned D.R.5.5. The subject property fronts North East Creek on the north side of Wagners Avenue and north of Eastern Boulevard in the Essex area of Baltimore County. As shown on the site plan, the property, consisting of 7,500 square feet, more or less, is improved with a 1½-story single-family dwelling built in 1959 and an existing shed that measures 10 feet wide by 16 feet deep. There is also an existing smaller shed next to the larger shed that measures 8 feet by 8 feet. Testimony proffered by Petitioner Thurman Huhn indicated that the existing larger shed in the side yard (10 feet by 16 feet) was placed in that location eight years ago to replace the smaller shed (8 feet by 8 feet), which was moved so it would be right next to the larger one.

Further testimony established that the neighbor most affected by Petitioner's existing shed, Ms. Mary E. Clark, does not oppose the location of the shed and actually enjoys the benefits she derives from its placement in the side yard close to her property. Petitioners requested and received Ms. Clark's approval prior to constructing the aforementioned shed as indicated by the letter from Ms. Clark that was marked and accepted into evidence as Petitioner's Exhibit 3. Further, Ms. Clark noted that the motion light attached to the shed serves as a security measure for both Petitioners and Ms. Clark, enhancing the safety of the properties. Moreover, the shed helps shield wind and noise from adversely affecting Ms. Clark's home. The letter also establishes that the shed is aesthetically pleasing as it matches the exterior color of Petitioners' home and improves the visual appearance of the property by replacing a metal shed that did not advance the aesthetics of the area.

Testifying in opposition to the location of the shed was Ms. Radtke, who lives on the other side of the property, on the opposite side of where the shed is located. Ms. Radtke

indicated that her relationship with Petitioners as neighbors has been up and down over the years and has deteriorated more recently. She indicated that she made the aforementioned complaint to the County's Code Enforcement Bureau as a retaliation for complaints made by Petitioners to that agency over the condition of her property. Photographs that were taken by Petitioners last year were marked and accepted into evidence as Petitioners' Exhibits 4A through 4F and show a significant amount of debris and building materials strewn throughout Ms. Radtke's property. Ms. Radtke indicated those problems have since been addressed and cleared up.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The Department of Environmental Protection and Resource Management indicated that development of the subject property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and other Sections of the Baltimore County Code). Generally, the remaining comments do not provide opposition or other recommendations concerning the requested relief.

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 requests. The subject property is constrained environmentally due to its location in a Chesapeake Bay Critical Area. Further, the property is constrained by the dense residential nature of the surrounding area making compliance with the Zoning Regulations a practical hardship. Thus, the shed as it has existed, has had no adverse effects on the most affected neighbor, and has actually provided ample benefits to this neighbor.

I conclude that the subject property is unique in a zoning sense and that Petitioner would suffer practical difficulty and undue hardship if the variance were to be denied. I further find that the variance can be granted in strict harmony with the spirit and intent of said regulations,

and in such manner as to grant relief without injury to the public health, safety and general welfare.

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 27th day of July, 2009 by this Deputy Zoning Commissioner, that Petitioners' Variance request from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing detached accessory structure (shed) to be located on the side of a dwelling with a 0 foot setback in lieu of the required rear and 2 ½ feet, respectively, be and are hereby GRANTED, subject to the following:

1. Petitioners are advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Development of the subject property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and other Sections, of the Baltimore County Code.

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