

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
S side of Middletown Road; 542 feet NW of Gores Mill Road	*	DEPUTY ZONING
6 th Election District	*	COMMISSIONER
3 rd Councilmanic District (19912 Middletown Road)	*	FOR BALTIMORE COUNTY
Mario A. De La Rosa <i>Petitioner</i>	*	Case No. 2009-0318-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 the legal owner of the subject property, Mario A. De La Rosa. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for a proposed accessory building (storage barn) with a building footprint that is greater than the principal use dwelling. Petitioner is also requesting Variance relief from Section 400.3 of the B.C.Z.R. to permit a proposed accessory building (storage barn) with a height of 29 feet in lieu of the maximum permitted 15 feet. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested relief was Petitioner Mario A. De La Rosa and Leonard T. Bohager, L.S., P.E., the professional engineer who prepared the site plan. There were no Protestants or interested citizens in attendance at the hearing.

Leonard T. Bohager, L.S., P.E., the professional engineer who prepared the site plan submitted into evidence as Petitioner’s Exhibit 1, was accepted as an expert in engineering, site planning, and the Baltimore County Zoning Regulations. Mr. Bohager presented testimony and evidence revealing that the subject property, 19912 Middletown Road, is located on the south side

of Middletown Road, approximately 4.5 miles west of Interstate 83 and approximately 4 miles south of the Maryland-Pennsylvania line in the Parkton area of Baltimore County. The subject property contains approximately 1.06 acres, more or less, zoned R.C.4. The property is currently improved with a two-story dwelling that has a footprint of approximately 600 square feet and a macadam drive with ingress/egress access off of Middletown Road. The stucco façade of the home and the aforementioned ingress/egress for the property are shown on the photographs marked and accepted into evidence as Petitioner's Exhibits 4A through 4C. Petitioner noted that the area surrounding the subject property is largely rural-residential in character containing mostly farms and large acreage residences as seen on the zoning map aerial photograph marked and accepted into evidence as Petitioner's Exhibit 2.

Further testimony revealed that the primary structure was built in 1890 as a farmhouse and since renovated to serve as a single-family dwelling. The dwelling, built on a rock and mortar foundation, has two stories and an unfinished basement. Petitioner indicated that the basement, containing a dirt floor, remains unfinished due to extremely damp conditions. Evidence also indicated that the subject property is most likely the last remaining parcel of a large farm that had been subdivided through the years. Moreover, Mr. Bohager indicated that due to a series of road improvements to Middletown Road, originally a rural dirt road, the subject property is deprived of a usable front yard as seen in the photograph accepted into evidence as Petitioner's Exhibit 4A.

Mr. Bohager indicated that Petitioner proposes to construct an accessory structure/storage barn in the rear of the subject property. The proposed location for the accessory structure in the rear yard, as seen in the photos accepted into evidence collectively as Petitioner's Exhibits 5A and 5B, is relatively clear and would not require any additional grading or disturbance. The proposed barn would serve residential purposes by providing storage for Petitioner's lawn equipment,

vehicles, and general household items. The storage barn (32' x 28') would contain garage door style bays and be equipped with a loft for extra storage. Petitioner indicates that the barn would be approximately 29 feet in height and contain 1,120 square feet. Architectural elevations and renderings for the proposed barn were marked and accepted into evidence as Petitioner's Exhibit 3. This proposed building footprint would be larger than that of the principal use dwelling. Mr. Bohager stated that, pursuant to Petitioner's wishes, the storage barn would be consistent in appearance and materials with other accessory structures in the surrounding area. Most notable of these structures is the horse barn located on 19904 Middletown Road to the east of the subject property. This horse barn can be seen in the photograph accepted into evidence as Petitioner's Exhibit 6A. Much like the adjacent neighbor's horse barn, the proposed structure would resemble a farmhouse barn with similar color siding and roofing. A gravel drive would provide access from Petitioner's macadam driveway to the storage barn.

In support of the requested special hearing, Petitioner indicated that the proposed footprint is necessary due to the lack of storage space available within the dwelling. As a result of the extremely close proximity of the home to the road, a garage attached to the home is impractical and not feasible. Moreover, the extremely damp conditions in the basement render the space unusable for storage. Therefore, there is insufficient storage space in the principal dwelling and on the subject property for Petitioner's residential storage.

In support of the variance request, Petitioner indicated that due to the aforementioned unusual characteristics and conditions of the subject property, strict compliance with the zoning regulations would result in practical difficulty and undue hardship. The primary dwelling was constructed in 1890, approximately 120 years ago. The materials used in constructing the structure over a century ago, a rock and mortar foundation and dirt basement floor, are not

conducive to a finished basement and storage of household items. Further these materials contribute to the extremely damp conditions in the unfinished basement. Storage in the dirt-floor basement would be impractical and probably result in damage to the items being stored. Moreover, the close proximity of the home to the road constrains development of the subject property. Due to this proximity, a detached or front-loading garage to serve the property's storage needs would be impractical and very difficult to design and implement.

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 July 9, 2009, which recommends that the accessory structure not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or bathroom facilities, nor be used for commercial purposes. Comments were received from the Department of Environmental Protection and Resource Management dated July 13, 2009 indicating that the property must comply with the Forest Conservation Regulations. Prior to building permit approval, the location of the well and septic system must be shown on the plan. Furthermore, Wallace S. Lippincott, Agricultural Preservation Specialist with DEPRM, comments that the requested relief raises concerns. He indicates that the property is zoned R.C.4 and the purpose of the Zone is to reduce impacts on the reservoirs through retaining natural vegetation and limiting impervious surfaces. He believes the request may increase the impervious surface area through buildings, roads and potentially a parking pad. He recommends that Petitioner determine with the Zoning Office if the use is permitted, and also states that Petitioner must supply the percentage of impervious surfaces proposed and that impervious cover should not exceed 10% of the site.

In response to the Zoning Advisory Committee (ZAC) comments delineated above, Petitioner's engineer, Mr. Bohager, noted that the storage barn will not be used as a dwelling or

contain dwelling related amenities. The proposed barn is to be used for residential storage purposes, not for commercial activities or as a dwelling. Such a structure is permitted in the R.C.4 Zone. Further, Mr. Bohager notes that although the addition of the proposed accessory structure would increase the current impervious surface area on the subject property, this increase would still be less than 10% of the total acreage of the property. Based upon the testimony and evidence presented, I am satisfied that Petitioner has adequately addressed the concerns of DEPRM and the Office of Planning.

Turning first to the Petition for Special Hearing, I am persuaded to grant the requested relief. Initially, it should be noted that Section 101.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) defines an accessory use or structure as:

“a use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure.”

In this case, Petitioner requests that the undersigned determine that despite the fact that the accessory structure (storage barn) would no longer be subordinate in area to the principal structure, that it nonetheless is still an accessory structure. In my view, despite the proposed footprint of the storage barn being larger than that of the principal structure, the storage barn is and will remain as an accessory structure, subordinate to the principal structure. No one would reside in the storage barn nor would any commercial enterprise be conducted there. The addition of the storage barn and its proposed dimensions are only desired in order to provide a specific location for the storage of lawn equipment, vehicles, and general household items that Petitioner owns, and to improve the aesthetics of the property. Currently, there is insufficient space to adequately store these items. Thus, the storage barn serves the principal structure as an accessory use and structure in the spirit and intent of the definition enumerated in Section 101.1 of the B.C.Z.R.

As to the variance request, considering all of the testimony and evidence presented, I am convinced that the request should be granted. First, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The principal dwelling was constructed in 1890, approximately 120 years ago and the existing unfinished basement is extremely damp and unsuitable for storage purposes. Further, the proximity of the home to Middletown Road eliminates the possibility of a garage being attached near the front of the dwelling. Hence, I find the property to be unique in a zoning sense. Moreover, if the requested relief was to be refused and strict compliance with the zoning regulations mandated, Petitioner would suffer practical difficulty and unreasonable hardship.

In addition, I find that the variance request can be granted in strict harmony with the spirit and intent of said zoning regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. The proposed storage barn will be compatible with the rural-residential character of the Parkton-Freeland area of northern Baltimore County and will allow Petitioner to provide adequate storage for the subject property. Thus, I find that this variance request can be granted as to meet the requirements of Section 307.1 of the B.C.Z.R., as interpreted in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

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 and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 20th day of August, 2009 that Petitioner's Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a proposed accessory

building (storage barn) with a building footprint that is greater than the principal use dwelling be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's Variance request from Section 400.3 of the B.C.Z.R. to permit a proposed accessory building (storage barn) with a height of 29 feet in lieu of the maximum permitted 15 feet be and is hereby GRANTED, subject to the following:

1. Petitioner is advised that he 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 his 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. The Petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The accessory structure shall not be used for commercial purposes.
4. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
5. Prior to building permit approval, the location of the well and septic system must be shown on the plan and approved by Ground Water Management.

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