

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
E/S Eastern Avenue, Ext. of 180' N of		
Minnow Branch Road	*	ZONING COMMISSIONER
(12209 Eastern Avenue)		
15 th Election District	*	OF
6 th Council District		
	*	BALTIMORE COUNTY
Daniel Breeden, Jr., et ux		
<i>Petitioners</i>	*	Case No. 2010-0011-SPH

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by Daniel Breeden, Jr., property owner, and his wife, Charlotte Marie Breeden, caretaker. Petitioners request a special hearing to approve the placement of a temporary accessory structure (trailer) on the property to be used as a caretaker’s dwelling. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requests was Charlotte Breeden and her son, Darnell Veney. There were no Protestants or other interested persons present; however, it is to be noted that a petition was received from the Chase community (Petitioners’ Exhibit 2) signed by 23 residents all in support of the Petitioners request.

Testimony and evidence offered revealed that the subject property is an irregular triangular shaped parcel located on the southeast side of Eastern Avenue just west of Brinkman’s Road in the Middle River/Chase area of eastern Baltimore County. The property contains an area of 10,890 square feet (0.25 acres) zoned D.R.5.5 and is improved with a two-story (split-foyer) frame dwelling built by the Petitioners in 1994. The property, however, has been in the Petitioners family for many years. Prior to the existing home, the Breeden’s lived in a mobile home trailer on the property that was subsequently removed following the issuance of their use and occupancy permit. The subject of the request relates to a 14' x 60' trailer Mrs. Breeden

desires to bring to the property. It will be located behind the home on the southeastern portion of the lot that is well buffered from view by mature trees. In this regard, Mrs. Breeden indicated that after 45 years of employment she had to retire from her Air Force publication job in 2005 in order to give full time and attention to her 77-year old husband, Daniel, who suffers with pulmonary lung and heart disease; her 87-year bedridden aunt, Mary Frances Green, and her 87-year old mother, who has been diagnosed with multiple health problems including Alzheimer's. *See* Petitioners' Exhibit 3. Mrs. Breeden's 85-year old father, John Connor, is no longer able to give the assistance she requires to care for these family members. She now proposes bringing a trailer to the property to be used as a caretaker's dwelling. Her son, Darnell Veney, and his fiancé, will occupy the trailer and give the required assistance to enable Mrs. Breeden to provide continued care for her loved ones. Lloyd's Home Sales, located at Pulaski Highway and Mountain Road, has agreed to help the family by providing the trailer.

As a result of increased medical costs and the expanding needs of the elderly, there has been an increased demand for accessory apartments and caretaker dwellings, i.e., units created within existing single-family homes or on the same lots. They are independent units but may share an entrance, yard and parking area with the primary units. They are often called "mother-in-law apartments", "mother-daughter homes", "secondary residences", "shared housing", "grammy flats", or "elderly cottage housing opportunities". Some have common kitchens, some are detached or semi-detached units usually placed in the rear yard of the existing dwelling. All raise similar regulatory problems and legal issues. All attempt to resolve a growing problem, i.e., the need for housing for the elderly that will provide familial supervision while permitting an element of perceived independence. An accessory use is defined in Section 101 as being customarily incident and subordinate to and serving a principal use; subordinate in area, extent, or purpose to the principal use; located on the same lot; and which contributes to the comfort, convenience, or necessity of the occupants. There can be no question that the reason

for having Mrs. Breeden's son live on the premises is for the family's comfort, convenience, and necessity in providing needed care. It is hoped and expected in our society that children return to their parents the love and security that parents initially provided to them. That is exhibited best in circumstances such as this where the elderly parent and grandparents are being cared for by their children.

The expansion of this family will not in any way alter the nature of the family itself. A family is a "collective body of persons living together in one house, under the same management and head . . . directing their attention to the promotion of their mutual interest and social happiness." Mrs. Breeden is suggesting no more than this. It is clear from the testimony that if the special hearing is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in a substantial detriment to the public good.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if the instant relief were not granted. It has been established that the requirement from which the Petitioners seek relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the family has support of their neighbors and the temporary use will not be detrimental to the public health, safety, and general welfare. That is, the use of the proposed living quarters will be limited to the caretaker of the Breeden property or a Breeden family member. Thus, relief shall be granted subject to this condition as well as those restrictions on this approval listed below.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 23rd day of November 2009 that the Petition for Special Hearing to approve the use of a

temporary accessory building (trailer) for a caretaker's dwelling, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED; subject to the following restrictions:

1. The Petitioners are made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from the date of this Order has expired. If for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The use of the proposed caretaker's dwelling is limited to the caretaker of the Breeden property or a Breeden family member and shall become null and void upon the sale or transfer of the subject property to anyone other than the current owner or for a period of ten (10) years from the date of this Order, whichever occurs first. At no time can the living quarters be used as a rental apartment.
3. The trailer shall be removed if the property is sold or at the end of ten (10) years of the date hereof.
4. Within ninety (90) days of the date hereof, the Petitioners shall record in the Land Records of Baltimore County a Covenant to the Deed for their property (in the form attached) restricting the use of the caretaker's dwelling to the Breeden family as specified above in Restriction No. 2. A copy of the recorded Covenant shall be submitted to the Department of Permits and Development Management (DPDM) for inclusion in the case file.
5. The Petitioners shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management (DPDM) reasonable access to the caretaker's trailer on the subject property to insure compliance with this Order.
6. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

