

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
N/S Gadd Road, 1,570' W of c/line of	*	ZONING COMMISSIONER
Falls Road		
(2307 Gadd Road)	*	OF
8 th Election District	*	BALTIMORE COUNTY
3 rd Council District	*	
Rustica, LLC		
Petitioner	*	Case No. 2010-0087-SPHA

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Kim J. Davis, managing member of Rustica, LLC, by and through its attorney, Lawrence E. Schmidt, Esquire. The Petitioner requests a special hearing pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.) Section 500.7 to permit livable space in an accessory structure (pool house). In addition, variance relief is requested from Section 400.1 of the B.C.Z.R. to permit accessory uses and structures (including an existing tenant house and proposed pool house) at a location (front and side, respectively) other than the rear yard, and finally from Section 400.3 of the B.C.Z.R. to permit these accessory uses and structures with a height greater than the maximum permitted 15 feet as follows:

- For an existing tenant house – 27 feet in lieu of the maximum permitted 15-foot limit
- For a proposed pool house with a height of 24 feet in lieu of the maximum permitted 15-foot limit.

The subject property and relief sought are more particularly described on the site plan and building elevation drawings, which were submitted into evidence and marked as Petitioner’s Exhibits 1 and 3 respectively.

Appearing at the requisite public hearing in support of the requests were Kim J. Davis, on behalf of the Petitioner, and her attorney, Lawrence E. Schmidt, Esquire. There were no Protestants or other interested persons present. Mr. and Mrs. Clark F. MacKenzie (2310 Gadd Road) and Mr. and Mrs. Mackey F. Hughes (2200 Gadd Road) who reside in close proximity to the subject property wrote letters expressing support of the proposal including the architecture and scale of the new home and out buildings being constructed. Their letters were placed into evidence collectively as Petitioner's Exhibit 5.

The subject property was once part of a larger tract owned by John D. Gadd and is now approximately 25.68 acres in area, zoned R.C.2. It is a rectangularly shaped lot with frontage on Gadd Road just north of the intersection of Shawan and Falls Road in Cockeyville. Presently, the property is improved with a tenant house oriented towards Gadd Road, existing stables and farm buildings as illustrated on the site plan (Petitioner's Exhibit 1) and photographs (Petitioner's Exhibit 4). The tenant house, one of the subjects of the petition, was built some 50 years ago. Historically, it was used by Dr. Gadd as a veterinary clinic and housed farm hands that worked on the horse farm. The Petitioner proposes constructing a substantially sized single-family dwelling on the property as more particularly shown on the site plan and elevations prepared by architect, Donald B. Ratcliffe, AIA & Associates. After construction, Kim and Jim Davis will thereafter reside in the dwelling. The Petitioner desires to retain the existing tenant house structure, which is 27 feet in height. Variance relief is necessary to legitimize both the height and the orientation of the accessory building that will be in the front yard once the principal dwelling is finished and, therefore, contrary to Section 400 of the B.C.Z.R.¹

¹ Section 400 of the B.C.Z.R. pertains to accessory buildings in residential zones and mandates their location only in the rear . . . with a height limitation of 15 feet. Sections 1A01.3A and 300.1 more specifically pertain to accessory structures in the Resource Conservation Zone and specifically state that the height of farm buildings and barns are an exception to Section 400. It became obvious, at the outset of the hearing, that the accessory structures in this case, are not a barn or "other accessory agricultural building" but more correctly an accessory recreational pool house and tenant house structures. They are, therefore, subject to the provisions of Section 400.

Petitioner's attorney aptly points out that an accessory tenant house is not a "farm or agricultural building" as contemplated in Section 404. Clearly, this is a large lot capable of containing both the existing and proposed structures. Moreover, the proposed locations of each building appear appropriate.

The pool house to be located in the southeast corner of the property and to the greatest extent behind the new dwelling will consist of a changing room, entertainment room, bar, exercise room, game room and bathroom facilities with pool equipment and storage areas. There are no cooking facilities and no intention of turning the pool house into any sort of dwelling. The roof and exterior of the proposed building will be built to match the dwelling on the site. As the floor plan and elevation drawings (Petitioner's Exhibits 2 and 3) and photographs clearly demonstrate, both the dwelling and the pool house are very impressive structures. Ms. Davis demonstrated that the roof pitch and height at 23 feet were designed to match that of the house. The location is driven by the inability to build any further in the rear yard and in its proposed location will be positioned far from any lot lines and there will be no detrimental impact on the neighbors.

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. I find that the Petitioner has met the requisite burden imposed upon it by Section 307 of the B.C.Z.R. for variance relief to be granted and that strict compliance with the zoning regulations would be unnecessarily burdensome to the Davis's and their limited liability company. Maintaining an accessory structure is a permitted use and failure to grant the variance would deprive them of a reasonable use of their property. *See, Belvoire Farms v. North* 355 Md. 259 (1999). I find that the property is unique in size, shape and the prior location of existing structures that have been in existence prior to the Resource Conservation Zoning regulations. In my view, the relief requested will not result in any detriment to the health, safety and general

welfare of the surrounding locale and shall, therefore, be granted. The Office of Planning has made a very positive comment on the proposed variance petitions. The request to build this structure to a height of 24 feet – in an area that has justifiably earned a reputation as being one of the finest residential sections in the metropolitan area is not in conflict with the character of the neighborhood. *See*, for example similar relief granted in Case Nos. 06-510-A (Thornton Mill Road), 08-225-SPHA (16809 York Road), 07-589-A (13023 Beaver Dam Road), and 08-0528-A (1718 Glencoe Road).

Pursuant to the advertisement, posting of the property and public hearing on these Petitions 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 24th day of November 2009 that the Petition for Special Hearing seeking approval of living space in an accessory structure (the pool house), in accordance with Petitioner's Exhibits 1 and 2, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit accessory structures (existing tenant house/proposed pool house) to be located in the front yard and side yards in lieu of the required rear yard, and to permit accessory structure heights of 27 feet for the tenant house and 24 feet for the pool house in lieu of the maximum allowed 15 feet for each, in accordance with Petitioner's Exhibits 1 and 3, be and is hereby GRANTED, subject to the following restrictions:

1. The Petitioner may apply for its permit 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 an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. Compliance with the Zoning Advisory Committee (ZAC) comment submitted by the Department of Environmental Protection and Resource Management

(DEPRM), dated November 3, 2009, requiring compliance with the Forest Conservation Regulations and soil evaluations at the discretion of DEPRM's Ground Water Management Section to determine a septic reserve area for the pool house. A copy of this comment has been attached hereto and is made a part hereof.

3. The pool house shall be limited to uses accessory to the residential uses of the property. It shall not be used for commercial or business purposes. Moreover, as noted on the site plan (Petitioner's Exhibit 1) the Petitioner shall not allow or cause the pool house to be converted to a second dwelling unit and/or apartments. There shall be no kitchen/cooking facilities contained therein.
4. 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 made within thirty (30) days of the date of this Order.

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

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