

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
S side of Old Court Road; 465 feet		
E of the c/l of Granite Road	*	DEPUTY ZONING
2 <sup>nd</sup> Election District		
4 <sup>th</sup> Councilmanic District	*	COMMISSIONER
(10225 Old Court Road)		
	*	FOR BALTIMORE COUNTY
<b>Craig and Elizabeth Shotwell</b>		
<i>Petitioners</i>	*	<b>CASE NO. 2010-0315-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, Craig and Elizabeth Shotwell. Petitioners are requesting Variance relief from Section 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory structure to be located in the side yard with a height of 25 feet in lieu of the required rear yard and a permitted height of 15 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 request was Petitioner Craig Shotwell. There were no Protestants or other interested citizens in attendance at the hearing.

It should be noted that this matter came before me as a result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management.<sup>1</sup> This complaint cited a concern that the subject property was being sold as a single-family dwelling with a detached three bedroom guest house. A Code Inspections and Enforcement Correction Notice was issued to Petitioner on April 28, 2010 alleging that no more than one principal dwelling is permitted on any lot in an R.C.2 Zone, and noted the presence of a

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<sup>1</sup> Case No: CO-0076696 is contained within the case file.

detached structure that was without a breezeway per the previously issued permit #B658264. Receipt of this citation and other factors which will be expounded on further prompted Petitioner to file the instant variance request.

Testimony and evidence offered revealed that the subject property is an irregularly shaped parcel consisting of approximately 6.1 acres, more or less, zoned R.C.2 and located in the Granite/Woodstock area of Baltimore County, east of the Howard County line, on the south side of Old Court Road. Ingress/egress for the property is via a left turn off a private driveway accessing Old Court Road. The subject property is improved with a two-story single-family dwelling constructed in 1891, according to the Real Property Data Search marked and accepted into evidence as Petitioners' Exhibit 3, and contains an enclosed area of 2,621 square feet. A macadam driveway leads past the front of the home and expands into a large gravel-parking pad that allows access to the accessory structure in controversy. The footprint of the house can be seen more clearly in the zoning map of the subject property that was marked and accepted into evidence as Petitioners' Exhibit 2.

In order to understand the context of the requested zoning relief, a background to the structure in controversy is necessary. Petitioner and legal property owner Craig Shotwell explained that he and his wife purchased the subject property in August of 2004 from the previous owner.<sup>2</sup> Mr. Shotwell stated that he owns his own construction business, which at the time of purchase in 2004, was thriving. In order to house the family cars as well as his business vehicles and to provide for an extension of living space, Mr. Shotwell desired to construct a two-story garage/home office on his property. Due to the unique configuration of the subject property and the existence of a significant amount of specimen trees and forestation in the rear of the property, Mr. Shotwell desired to construct this addition at the southeast side/rear yard of the

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<sup>2</sup> Per Petitioner's Exhibit 3, this Deed is recorded in Liber-Folio 20562-118.

property. The site plan depicts the numerous specimen trees existing on the property, some exceeding 45 inches in diameter.

On December 13, 2004, four months after purchasing the subject property, Mr. Shotwell applied for and was issued building permit #B578484 to construct a 2,200 square foot two-story addition to be used as a first floor, four-car garage and a second floor home-office and playroom, on the side of the existing single-family dwelling. This addition would be connected to the primary structure by a 75 foot long breezeway. According to a printout of the archived records contained within the Code Enforcement case file, the permit application for the addition was approved and a permit issued for the project. Mr. Shotwell testified that subsequent to the issuance of the initial building permit, he has continuously renewed the building permit in order to keep the ongoing construction of the addition valid. According to the evidence contained within the case file, building permit #B658264 was issued to Mr. Shotwell on March 14, 2007, for construction of the same addition previously approved in 2004.<sup>3</sup>

Mr. Shotwell explained that the exterior of the structure is nearly complete. However, the interior of the structure is still in the process of construction with drywall, taping, and painting remaining. Mr. Shotwell acknowledged that at the time a complaint was made against the structure, construction of the breezeway had yet to be undertaken. Petitioner indicated that construction has been slowed due to the current economic conditions and that as a result of these economic conditions, he had to file for bankruptcy in 2008 and was currently not living in the home, which was in the process of being sold as a “short-sale.” Mr. Shotwell stated that another reason the breezeway was not constructed is there is not a current valid building permit because his application for renewal was flagged and denied, despite the fact that the building permit had

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<sup>3</sup> The file contains two additional permits, Permit - #P604902 issued on September 8, 2005, and Permit - #P608223 issued on October 11, 2005. Both permits involved construction of the structure in controversy.

twice been previously approved/renewed. Due to this denial of a building permit to complete the breezeway, Mr. Shotwell is in violation of the Zoning Regulations because no longer is the structure considered an “addition” to the primary structure, but is now an “accessory structure” placed in the side yard at a height of 25 feet in lieu of the required rear yard and 15 foot maximum height in violation of Section 400.1 of the B.C.Z.R. Furthermore, there are concerns that as currently improved, the structure in controversy could be considered a second dwelling in contravention of Section 1A01.3.B.4 of the Zoning Regulations.<sup>4</sup> Photographs of the principal dwelling and accessory structure were marked and accepted into evidence as Petitioners’ Exhibits 4A and 4B. With no ability to complete the breezeway and no other alternative, Petitioner indicated he was compelled to file for the instant variance relief in order to legitimize the existing structure as an “accessory structure.”

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 June 8, 2010, indicating the site was inspected and that subsequent discussions with the property owner and the Office of Permits and Development Management exposed that a permit was issued in 2007 to build a two-story accessory structure in the side yard to be attached by a 75 foot breezeway. Petitioner shared with the Planning Office that the addition has three rooms on the second floor that were to be used as offices for his business. The intent of a variance is to mitigate a hardship or practical difficulty. No explanation is given to the existence of a hardship. The Office of Planning recommends denial of the requested variance. Comments were received from the Department of Environmental Protection and Resource Management dated June 11, 2010, which indicate that development of the property must comply with the Regulations for the

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<sup>4</sup> This section of the Zoning Regulations states that “No more than one principal dwelling is permitted on any lot in an R.C.2 zone.”

Protection of Water Quality, Streams, Wetlands and Floodplains and must also comply with the Forest Conservation Regulations. If the proposed minor subdivision of this property is still active, the Forest Conservation Easement and/or Forest Buffer Easement must be recorded in the Land Records via the right-of-way plat process as well as all EIR comments of 2/5/08 addressed prior to issuance of any permits. If the subdivision has been abandoned, the Forest Buffer Easement and its covenants must still be recorded via the Exhibit A process.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested 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. Specifically, the subject property is unique due to the irregular lot configuration and the existence of a significant amount of specimen trees. There are several different varieties of such trees on the property including white oak, northern red oak, and green ash, some as large as 48 inches in diameter. These special circumstances make the current location for the accessory structure appropriate. Further, the preservation of trees is an appropriate justification for zoning relief. *See McLean v. Soley*, 270 Md. 208 (1973). While the Office of Planning recommends denial of the requested relief due to an apparent absence of hardship, the undersigned feels that if strict adherence to the Zoning Regulations were required, Petitioner would suffer unreasonable hardship. Self-created hardship does not qualify for relief under the standard for a variance; however, the hardship at issue, in my view, is not entirely self-created. However misguided it may have been, the Department of Permits and Development Management granted Mr. Shotwell a building permit for the subject property in 2004 that was renewed in 2007 for the construction of the 2,200 square foot addition and the proposed uses, as well as the 75 foot long breezeway. It is troubling that the Department would find that Petitioners' initial proposal for a 2,200 square foot addition

connected to the primary structure by a 75 foot long breezeway was within the spirit and intent of the Zoning Regulations, but that is not the issue before me. It is even more unfortunate that, perhaps now realizing their error in issuing this permit, Permits and Development has now refused to grant the most recent request for a renewal of this same building permit. This renewal request was denied despite Petitioners' desire to complete the previously approved project. The denial of the building permit subsequently forces Petitioners to seek zoning relief or face the hardship of tearing down a structure that had twice been approved via a valid building permit. Thus, in my judgment, Petitioners have met the standard for variance relief requiring a showing that a property is unique or unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would result.

Moreover, little to no detriment to the community will be felt by the granting of this variance because the accessory structure cannot be seen from the public roadway nor viewed from adjacent properties. Therefore, I find this variance request can be granted in strict harmony with the spirit and intent of Section 307.1 of the B.C.Z.R., and in such a 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 request should be granted with conditions that will ensure that the subject structure is to be accessory and subordinate in use to the primary structure.

THEREFORE, IT IS ORDERED this 21<sup>st</sup> day of July, 2010 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 accessory structure to be located in the side yard with a height of 25 feet in lieu of the required rear yard and a permitted height of 15 feet be and

is hereby **GRANTED**, subject to the following which are conditions precedent to the granting of the relief:

1. Petitioners may apply for any required building permit 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 property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
3. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
4. Petitioners are prohibited from having the necessary infrastructure to support a full-bathroom within the approved accessory structure. Any full bathroom must be removed; only a half-bath with a sink and toilet may remain.
5. Petitioners 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 full bathroom (shower or tub) facilities.
6. The accessory structure shall not be used for commercial purposes.
7. It is expressly agreed and understood by Petitioners that the subject two-story garage accessory structure shall indeed be utilized as an accessory building or structure as that term is defined in Section 101 of the B.C.Z.R. The accessory structure shown on Petitioners' Exhibit 1 site plan shall be limited to uses incident and subordinate to the residential use of the property and the existing single-family dwelling thereon. When applying for a building permit, the site plan filed must reference this case and set forth and address the conditions and restrictions of this Order.
8. To assure the current and future use of the subject property, Petitioners will, within sixty (60) days of the date hereof, record in the Land Records of Baltimore County a Covenant to the Deed for their property (in the form attached) expressly conditioning the use of the property.
9. Said Covenant shall contain the proviso that the subject two-story garage accessory structure shown on Petitioners' Exhibit 1 site plan shall be limited to uses incident and subordinate to the residential use of the property and the existing single-family dwelling thereon, and shall not be converted to a dwelling unit or apartment, shall not contain any

10. The decision in this case is not a legal precedent that may be cited as such in any other zoning case involving a residential garage accessory structure.
11. Upon request and reasonable notice, the Petitioners shall permit a representative of the Baltimore County Division of Code Inspections and Enforcement to make periodic inspections of the subject property to ensure compliance with this Order.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz

**COVENANT TO THE DEED**

Whereas, in a Petition for Variance before the Deputy Zoning Commissioner for Baltimore County, Case No. 2010-0315-A, Craig and Elizabeth Shotwell, the Petitioners, requested a Variance to permit an accessory structure to be located in the side yard with a height of 25 feet in lieu of the required rear yard and a permitted height of 15 feet. The Deputy Zoning Commissioner, by Order dated the \_\_\_\_\_ day of July, 2010, granted the Variance, providing the following Covenant be added to their Deed, which Deed was recorded in the Land Records of Baltimore County, at Liber \_\_\_\_\_, Folio \_\_\_\_\_.

Craig and Elizabeth Shotwell, and subsequent owners, hereby covenant that the accessory structure shall not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or full bathroom (shower or tub), and not be used for commercial purposes. It is expressly agreed and understood by Petitioners that the subject two-story garage accessory structure shall indeed be built and utilized as an accessory building or structure as that term is defined in Section 101 of the Baltimore County Zoning Regulations. The accessory structure shown on Petitioners' Exhibit 1 site plan shall be limited to uses incident and subordinate to the residential use of the property and the existing single-family dwelling thereon. Said property is subject to all terms and conditions contained in the Order issued in Case No. 2010-0315-A.

As witness our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_(SEAL)  
Craig Shotwell

\_\_\_\_\_(SEAL)  
Elizabeth Shotwell

State of Maryland)

To wit

County of Baltimore)

I HEREBY CERTIFY THAT ON THIS \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared Craig and Elizabeth Shotwell, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument, and acknowledge that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal:

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NOTARY PUBLIC

My Commission Expires: