

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
W of Cedar Lane; 1412 feet from the	*	DEPUTY ZONING
c/l of Towood Road		
11 <sup>th</sup> Election District	*	COMMISSIONER
3 <sup>rd</sup> Councilmanic District		
(11100 Cedar Lane)	*	FOR BALTIMORE COUNTY
<b>Henry C. Smith III and Tanja M. Smith</b>	*	
<i>Legal Owners</i>		<b>CASE NO. 2010-0344-SPHA</b>
	*	

\* \* \* \* \*

**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 owners of the subject property, Henry C. Smith, III and Tanja M. Smith. The Special Hearing request was filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for an accessory building (garage, shop and storage building) with a footprint area (5,040 square feet) larger than the footprint area (3,115 square feet) of the principal building. The Variance request is from Section 400.3 of the B.C.Z.R. to permit an accessory building (garage, shop and storage building) with a height of 38 feet in lieu of the 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 Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requested Special Hearing and Variance petitions was Petitioner Henry C. Smith, III and David Billingsley with Central Drafting & Design, Inc., the land use professional who prepared the site plan and is assisting Petitioners. There were no Protestants or interested citizens in attendance at the hearing.

Testimony and evidence presented revealed that the subject property is a large, irregularly shaped parcel consisting of approximately 4.97 acres, more or less, zoned R.C.5. The property is located at the terminus of Cedar Lane with ingress/egress from same, south of Mt. Vista Road, in the Kingsville area of Baltimore County. The area surrounding the subject property is primarily residential, characterized by large parcels with agricultural uses prevalent and even with an R.C.7 zoning district in close proximity to the subject property. The subject property is improved with a single-family dwelling built in 2003 according to the Real Property Data Search marked and accepted into evidence as Petitioner's Exhibit 2, consisting of a total square footage of 5,492 square feet. As shown on the site plan, the property is also improved with an in-ground swimming pool and an existing pool house containing 1,151 square feet located in the rear of the property. Adjacent to the property is a large area of farmland used for harvesting corn and other crops. The improvements and the surrounding area can be seen more clearly from the aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 6.

At this juncture, Petitioner proposes to construct an accessory building in the rear of the subject property for use as storage for Petitioner's collection of antique and classic cars, as well as other "muscle" cars, and as an area for the renovation, rehabilitation and maintenance of the collection. The proposed building would have a footprint consisting of 5,040 square feet with a height of 38 feet. Additional testimony and evidence offered revealed that Petitioner has been collecting and renovating cars since the age of 12, with a proclivity for Ford cars from the 1960's to 70's "muscle" car era. He explained that he desires to construct a building to house this collection and to provide a working space for the maintenance, renovation and display for these automobiles that would mesh with the surrounding area. The proposed structure would have two-floors with the first floor in tongue and groove, completely open and used as the main space

to maintain, display and store the car collection. The second floor is intended for the storage of automobile parts and accessories, display of memorabilia, and a play area for Petitioner's family. Petitioner acknowledged and agreed that the building, if approved, would not be used as a residence or for any part of his commercial refrigeration company, which has its office several miles away. Further testimony indicated that the building is carefully designed to resemble a barn-like structure cohesive with the agricultural characteristics of the Kingsville area. Petitioner explained that this desire to mesh with the surroundings necessitated creating an extremely pitched roof in order to achieve a barn effect. Moreover, the structure is designed to minimize the visual effects, if any, that it may cause by creating a building that is narrow. Elevation drawings of the proposed structure were marked and accepted into evidence as Petitioner's Exhibit 5. Testimony also revealed that Petitioner does not plan on adding any paving or other impervious surface to provide access to the accessory structure. The surrounding neighbors have approved of the proposed structure and a document containing the signatures of these neighbors indicating such approval was marked and accepted into evidence as Petitioner's Exhibit 8.

The Zoning Advisory Committee ("ZAC") comments were received and are made part of the record of this case. Comments received from the Office of Planning dated June 29, 2010, recommend that the accessory structure not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or bathroom facilities, and not be used for commercial purposes. Additionally, it was indicated that the architecture should be compatible with the architecture and materials of the existing dwelling and that building elevations should be submitted for review and approval prior to the application for building permit. Comments were also received from the Department of Environmental Protection and Resource Management

dated June 28, 2010, which indicates that any proposed buildings (permits) would be reviewed by Groundwater Management.

Considering all the testimony and evidence presented, I am persuaded to grant the variance and special hearing 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 agricultural character of the subject and adjacent properties and the irregular shape of the parcel, combine to render the property unique in a zoning sense. With the property surrounded by open fields, creating a structure that meshes with the rural atmosphere is necessary and drives the need for the height variance. Further, I find that strict compliance with the Zoning Regulations would result in a denial of a reasonable and sufficient use of the property and would create an unreasonable hardship and practical difficulty. The design of the proposed accessory structure supplements the rural character of the neighborhood and would have minimal impact on the surrounding community. Thus, 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., as interpreted in *Cromwell v. Ward* 102 Md. App. 691 (1995), and in such a manner as to grant relief without injury to the public health, safety and general welfare. In addition I find that the request for special hearing both appropriate and reasonable and therefore grant the requested relief. In my judgment, although the footprint of the accessory structure will be larger than the footprint of the principal dwelling, it will certainly not overwhelm the property or the dwelling, and will be subordinate in use to the principal dwelling. Moreover, the accessory structure will be located far enough away from surrounding properties on this large tract of land so as not to crowd the land, nor cause a detriment to the surrounding community. However, the Petitioner is prohibited from implementing the infrastructure necessary to maintain a full bathroom (shower or tub facilities)

within the proposed accessory structure, but I will permit a half-bathroom with a utility sink for Petitioner's convenience, since the structure will be located almost 200 feet from the principal dwelling.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered, I find that Petitioners' Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 12<sup>th</sup> day of August, 2010 that Petitioners' request for Special Hearing relief filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve an accessory building (garage, shop and storage building) with a footprint area (5,040 square feet) larger than the footprint area (3,115 square feet) of the principal building be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioners' request for Variance from Section 400.3 of the B.C.Z.R. to permit an accessory building (garage, shop and storage building) with a height of 38 feet in lieu of the permitted 15 feet be and is hereby **GRANTED**.

The relief granted herein is subject to the following:

1. Petitioners may apply for their 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. Petitioners or subsequent owners shall not convert the accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, or kitchen facilities, nor have the infrastructure necessary to accommodate a full bathroom; only a half-bath with a utility sink and toilet may exist.
3. The accessory structure shall not be used for commercial purposes.

4. Building elevations shall be submitted to the Office of Planning for review and approval prior to the application for building permit.
5. 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.
6. 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.
7. 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 sleeping quarters, living area, kitchen or full bathroom (shower or tub) facilities, and shall not be used for any commercial purposes.
8. 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.
9. 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.

\_\_\_\_SIGNED\_\_\_\_\_  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

**COVENANT TO THE DEED**

Whereas, in a Petition for Special Hearing and Variance before the Deputy Zoning Commissioner for Baltimore County, Case No. 2010-0344-SPHA, Henry C. Smith III and Tanja M. Smith, the Petitioners, requested a Special Hearing to permit an accessory building (garage, shop and storage building) with a footprint area (5,040 square feet) larger than the footprint area (3,115 square feet) of the principal building, and a Variance to permit an accessory building (garage, shop and storage building) with a height of 38 feet in lieu of the permitted 15 feet. The Deputy Zoning Commissioner, by Order dated the 12<sup>th</sup> day of August, 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 \_\_\_\_\_.

Henry and Tanja Smith, 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. 2010-0344-SPHA.

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

\_\_\_\_\_(SEAL)  
Henry C. Smith III

\_\_\_\_\_(SEAL)  
Tanja M. Smith

State of Maryland)  
County of Baltimore)

To wit:

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 Henry C. Smith III and Tanja M. Smith, 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:

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_