

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE – W/S Reynolds Road,	ZONING COMMISSIONER
1,550' S of c/line Vinegar Hill Road *	
(11706 Reynolds Road)	OF
11 th Election District *	
3 rd Council District *	BALTIMORE COUNTY
Randall W. Mattheu, et ux *	
Petitioners *	Case No. 2010-0354-SPHA

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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 the owners of the subject property, Randall W. Mattheu and his wife, Irene K. Mattheu. The Petitioners request a special hearing to approve a proposed detached accessory structure (garage) with an area footprint larger than that of the principal dwelling. In addition, variance relief is requested from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the proposed accessory structure to have a height of 20 feet in lieu of the maximum allowed 15 feet. 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 request were Randall and Irene Mattheu, property owners. There were no Protestants or other interested persons present nor, as will be discussed below, were there any adverse Zoning Advisory Committee (ZAC) comments received from any of the County reviewing agencies.

Testimony and evidence offered revealed that the subject property, 11706 Reynolds Road, is an irregularly shaped parcel, consisting of approximately 1.09 acres, more or less, zoned R.C.5 and located on the west side of Reynolds Road in Kingsville. Ingress/egress is by way of

a paved panhandle driveway that extends westerly from Reynolds Road some 600 feet past the Hipley residence at 11708 Reynolds Road. The subject property is improved with a two-story dwelling built in 1958, consisting of 1,872 square feet, more or less, with a footprint of approximately 936 square feet on the first floor as evidenced by Maryland Department of Assessments and Taxation Real Property Data Search and contained within the case file. The subject property is also improved with a collapsed garage and carport, which is the subject of the zoning hearing before me. These accessory structures are to be razed and reconstructed as one garage that will resemble a “pole barn” (60' x 40').

In support of the requested relief, Mr. Mattheu testified that he grew up in the dwelling on the subject property. Mr. Mattheu explained that his father purchased the home in 1963 and that the dwelling was passed down to him and his siblings upon his father's passing and that he thereafter in 1999 bought his siblings' shares of the house to acquire sole ownership of the property. Mr. Mattheu stated that there were two (2) accessory structures located in the southwestern rear portion of the property but that these structures were destroyed during the recent substantial winter snowfalls. These structures protected the Petitioners' boats, lawn tractor and equipment and bee keeping supplies, honey and hives from the elements. Petitioners submitted photographs that clearly illustrate that the carport was completely destroyed by the nearly 60 inches of snow received December through January. These photographs were marked and accepted into evidence as Petitioners' Exhibit 2. Mr. Mattheu works for Baltimore County as a diesel mechanic specializing in ambulances and fire engines but performs no automotive repairs or services on the property. The Mattheu's desire to consolidate the two (2) broken down existing structures into one accessory pole barn structure that is being purchased from Pincer Pole Building Specialists. Having the structure at a height of 20 feet will allow for complete boat coverage and easy access as a standard 7-foot overhead door with a 15-foot high garage would not be

sufficient to allow the boats on trailers to enter. The extra space will allow for additional storage of lawn and garden supplies, boat items and bee keeping materials. Further testimony indicated that the proposed location is the only practicable place for the proposed garage due to the location of Gunpowder Falls State Park to the rear of the home, the unique panhandle configuration, location of the principal dwelling and the environmental constraints of the home. The property is heavily wooded with mature pine trees and an open meadow to the south of the home. Petitioners' explained that their nearest neighbor is buffered from the view of the proposed garage by the significant number of pine trees separating the properties. This new improvement will benefit the overall appearance of the property, as the two (2) existing sheds will be razed.

The determination of a variance request from the Zoning Regulations is governed by Section 307.1 of the B.C.Z.R., as interpreted by the Court of Special Appeals of Maryland in *Cromwell v. Ward*, 102 Md. App. 691 (1995). As indicated by the Court in *Cromwell*, "the general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances." 102 Md. App. at 700. The two-part variance test involves finding that a property is unique and unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would result.

After due consideration of the testimony and evidence presented, I am persuaded that Petitioners have met the requirements of Section 307 of the B.C.Z.R. and relief should be granted. There is adequate evidence that the subject property is peculiar, unusual and unique. Factors such as the subject property's location in the rear of a panhandle lot abutting Gunpowder Falls State Park with significant environmental constraints serve as special circumstances or conditions that combine to render the property unique in a zoning sense. Further, I find that strict compliance with the Zoning Regulations would create a hardship that would result in a

denial of a reasonable and sufficient use of the property. *See, Belvoir Farms v. North* 355 Md. 259 (1999). Additionally, since the property is removed from the road and is buffered from the adjacent property by mature Pine forest, minimal adverse consequences will result from the approval of the requested zoning relief. Moreover, it is of note that there was not one adverse Zoning Advisory Committee (ZAC) comment received from any of the County reviewing agencies. However, the Office of Planning has requested that approval be conditioned to exclude conversions for living space and/or commercial uses.

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 25th day of August 2010 that the Petitions for Special Hearing and Variance seeking relief, pursuant to Sections 500.7 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed detached accessory structure (pole barn) with an area footprint larger than that of the principal dwelling and with a height of 20 feet in lieu of the maximum allowed 15 feet, in accordance with Petitioners' Exhibit 1, be and are hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their 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) The garage shall be limited to uses accessory to the residential use of the property. It shall not be used for commercial or business purposes. Moreover, the Petitioners or their assigns shall not allow or cause the garage to be converted to a second dwelling unit and/or apartments. There shall be no living quarters contained therein, and no kitchen or bathroom facilities.

- 3) 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

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WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County