

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E side of Washington Avenue; 465 feet		
S of the c/l of Hillendale Avenue	*	DEPUTY ZONING
13 th Election District		
1 st Councilmanic District	*	COMMISSIONER
(627 Washington Avenue)		
	*	FOR BALTIMORE COUNTY
Charles V. Palmer		
<i>Petitioner</i>	*	CASE NO. 2011-0077-A

* * * * *

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 owner of the subject property, Charles V. Palmer. As filed, Petitioner is requesting Variance relief from Section 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory structure (shed) with a height of 20 feet in lieu of the required 15 feet.¹ The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the Variance request was Petitioner Charles Palmer. There were no other interested persons or Protestants in attendance.

Testimony and evidence offered revealed that the subject property is rectangular in shape, contains 0.92 acre or 40,200 square feet, and is zoned D.R.5.5. The property is improved with an existing two-story dwelling containing 1,986 square feet and built in 1930. The property is located on the east side of Washington Avenue and south of Hillendale Avenue in the Halethorpe area of Baltimore County. Petitioner states there was an existing garage at the location some time ago that was removed before he purchased the property in 1998. An acquaintance of Petitioner

¹ Petitioner states that the garage height is proposed to be 24 feet high as opposed to the height of 20 feet as stated in the Petition. Petitioner moved to amend the Petition to permit an accessory structure (shed) with a height of 24 feet in lieu of the required 15 feet. The amendment was granted without objection.

told him that he could build a replacement structure. The proposed shed started as a 12 foot by 14 foot one-story structure and was later increased to its current 24 foot by 24 foot two-story size and height. As justification for the proposed height that necessitates the requested variance, Petitioner indicated that he has a multitude of household items and furniture that he needs to store and does not have enough space in his basement to do so. Petitioner also explained that the contractor he originally hired to build the two-story shed did not inform him of the zoning laws and height restriction and has since left the job and not returned. At this juncture, the shed is about halfway completed and Petitioner stated he does not have the resources to reconstruct the shed in conformance with the 15 foot height limitations.

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 September 13, 2010 which indicates that the proposed accessory structure has been partially constructed. The building is very large for an accessory structure. It has a pitched roof and it appears there will be two levels or stories. The height of the building appears to be greater than 20 feet. The proposed use of the building and the building height should be clarified. The Office of Planning recommends 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.

The Zoning Commissioner's authority to grant variance relief from the requirements of the Regulations is established in Section 32-3-301 of the Baltimore County Code (B.C.C.). Section 307 of the B.C.Z.R. contains the standards for the grant of variance relief. This section has been interpreted by the Appellate Courts of this State, most notably in *Cromwell v. Ward*, 102 Md. App. 691 (1995). *Cromwell* essentially requires a two-prong examination of the variance request. First,

the Petitioner must demonstrate that the property at issue has features or characteristics that render it unique. If a Petitioner can meet the uniqueness threshold, only then is weight given to the second consideration -- whether the uniqueness of the property results in a practical difficulty or undue hardship upon the Petitioner if strict compliance with the Regulations is required. In addition, the Petitioner must demonstrate that the variance, if granted, would be within the spirit and intent of the Regulations and would not cause adverse impact to the public health, safety and general welfare, including detrimental impact to adjacent properties.

After considering all of the testimony and evidence presented at the hearing, I am not persuaded that Petitioner has met this burden and must deny the variance request. Indeed, *Cromwell* requires that there must be a unique characteristic of the property at issue (i.e., topography, shape, configuration, etc.), in order for relief to be granted. Based on the limited evidence presented by Petitioner, the characteristics of the subject site do not render it unique when compared to other lots in the neighborhood. I do not find the land unique in a zoning sense, as required by *Cromwell*. Although of no comfort to Petitioner, I find the problem here is a personal one and it is not a problem inherent in the land itself or in the application of the Zoning Regulations to the land.

Perhaps 10 or 15 years ago, the finding of practical difficulty or hardship would be all Petitioner needed to show in order to be granted the variance request; however, the Court in *Cromwell* redefined the test for variance, requiring that before a Petitioner even gets to the question of hardship and practical difficulty, there must be a finding that the property is unique when compared to other properties in the neighborhood. The legal standard now requires a finding that the property has some special circumstances or conditions existing that are peculiar to the land or the structure which is the subject of the variance request. This finding must be made

before any consideration of hardship or difficulty is made and if the property is not found to be unique, no variance can be granted. Equally important, the Court wanted to correct the practice of many jurisdictions finding hardship and difficulty first, which would then be used to show the property was unique, reasoning that the unusual situation on the property was different from that found on surrounding properties. Petitioner's effort to demonstrate hardship and practical difficulty is admirable; the evidence before me, however, gives no indication that the Regulations impact Petitioner's property in any way different from other lots in the neighborhood.

Although I am certainly understanding and empathetic with Petitioner's need and desire for a two-story storage shed, the proposed structure of this height is too large and intrusive as a mere "accessory" structure, will be out of character with the neighborhood, and in my judgment will adversely impact adjacent or nearby properties.

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 Petitioner's variance request should be denied.

THEREFORE, IT IS ORDERED this 16th day of November, 2010 by this Deputy Zoning Commissioner that Petitioner's Variance request from Section 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an accessory structure (shed) with a height of 24 feet in lieu of the required 15 feet be and are hereby **DENIED**; and

IT IS FURTHER ORDERED that Petitioner shall, at his sole cost and expense, remove the accessory structure (shed) from the property or otherwise obtain the proper permits and construct the structure in conformance with the Zoning Regulations **within six (6) months** from the date of 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

THB:pz