

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE – W/S Deer Park Road,	ZONING COMMISSIONER
740' NW c/line Dolfield Road *	
(4800 Deer Park Road)	OF
2 nd Election District *	
4 th Council District *	BALTIMORE COUNTY
Carol A. Reed	
Petitioner *	Case No. 2011-0081-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 the owner of the subject property, Carol A. Reed. The Petitioner requests a special hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an existing in-law apartment within an existing accessory building for the convenience of the owner. In addition, variance relief is requested from Section 400.3 of the B.C.Z.R. to permit an existing accessory building with a height of 22 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 Carol A. Reed, property owner, Marc A. Washington, son-in-law, and Dino Lafiandra, Esquire, with Whiteford, Taylor & Preston, L.L.P. There were no Protestants or other interested persons present; however, this matter came before me as the result of a Code Enforcement Correction Notice relative to the occupancy of the accessory structure as a single-family dwelling. A resolution of the violation case (Case No. 0080085) is pending the outcome of this request. It should be noted that the fact that a code violation is issued is generally not considered evidence in a zoning case.

Zoning enforcement is conducted by the Department of Permits and Development Management, which has the authority to issue Correction Notices and Citations, and to impose fines and other penalties for violation of law. On the other hand, the role of this office in this matter is to decide the discreet legal issue of whether the Petitioner is entitled to the requested special hearing and variance relief pertaining to the subject property.

Testimony and evidence offered revealed that the subject property is located on the west side of Deer Park Road north of Dolfield road and just south of Soldiers Delight in Owings Mills. It is irregularly shaped and consists of 2.764 acres more or less and zoned R.C. 4. Ms. Reed purchased the property in 2006 for the purpose of allowing her daughter (Holly) and son-in-law (Marc) to live in the main house with their family, and for Ms. Reed to live on the same property in the in-law apartment that she says existed in the accessory building on the property when she bought the property. In fact, the dwelling is quite old, having been built in 1907 and therefore dating back to the beginning of the 20th century or earlier. The accessory building is old as well, although perhaps not quite as old as the dwelling. It is unclear what the original use of the accessory building was. Initially, it may have been a barn or a large garage. Now, it is primarily used accessory to the residential uses for storage, and activities and the in-law apartment that is the subject of this hearing.

At the time Ms. Reed filed her petition, she was living in an in-law apartment on the upper level of the accessory building. At the hearing, Ms. Reed submitted a floor plan of the upper level in the configuration that she had envisioned using the space. By the time the hearing transpired, Ms. Reed had in fact abandoned the use of the upper level of the accessory building for living space and instead had begun living in the lower level of the accessory building. The undersigned Commissioner asked Ms. Reed to submit a floor plan of the lower level as Ms. Reed

had configured it for her use, and Ms. Reed has done so. The floor plan, entitled, “Lower Level, Accessory Building, Living Space, Intended Use for Owner” depicts a living space of approximately 38.5 feet by 26.33 feet, with one bedroom, a bathroom, a powder room, a living room, a dining room and a kitchen (Exhibit 3A). Ms. Reed also submitted a floor plan of the upper level, entitled, “Upper Unit in Accessory Building, Intended Use”, which depicts storage areas, activity areas, and an exercise area (Exhibit 3B). There is a bathroom, a refrigerator and a microwave depicted on the upper level floor plan, but there are no sleeping facilities of any type on the second floor, and there is no internal stairway between the two levels (there is a pass-thru the floor of the upper level to the ceiling of the lower level, but this is certainly not for the passage of a person from one level to the other.) The only way to get to the upper level of the accessory building is by way of an external stairway along the side of the accessory building.

The building appears to be about seven feet in excess of the 15 foot height limitation for accessory buildings in the R.C. 4 zone. I am persuaded that a variance for this excessive height should be granted. It was built well prior to the adoption of the zoning regulations.

As for the in-law apartment on the Lower level of the accessory building, I am directed by the Circuit Court case of J. Gary and Barbara Mueller, Case No. 03-C-09-07062, that an in-law apartment in an accessory building is a permissible use in a residential zone if it is occupied by a member of the immediate family of the occupants of the primary dwelling, and if the use otherwise is not detrimental to the health, safety and general welfare of the locality involved in the context of B.C.Z.R. Section 502.1. (See Opinion and Ruling received as Petitioners’ Exhibit 6) As noted, the primary dwelling is occupied by Ms. Reed’s daughter and her family, who are the immediate family of Ms. Reed. Furthermore, I find that the use of the accessory building pursuant to the floor plans submitted by Ms. Reed and noted above is not detrimental to the

health, safety or general welfare of the neighborhood and the community, and to be otherwise consistent with the requirements of B.C.Z.R. Section 502.1.

At the suggestion of her counsel, Ms. Reed voluntarily agreed to several conditions to this Order, which will be incorporated below.

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 20th day of December, 2010 that the Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve an existing in-law apartment in an existing accessory building for the convenience of the owner, in accordance with Petitioner's Exhibits 1 and 3, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Variance seeking relief from Section 400.3 of the B.C.Z.R. to permit an existing accessory building with a height of 22 feet in lieu of the maximum allowed 15 feet, be and is hereby GRANTED, subject to the following restrictions which are conditions precedent to the relief conferred herein:

- 1) The relief granted herein shall be effective only so long as the principal dwelling and the in-law apartment shall be occupied by members of the same immediate family, meaning by persons related by blood, marriage, or adoption.
- 2) The apartment shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code.
- 3) The Petitioner shall within 30 (thirty) days of a final, non-appealable Order in this matter record amongst the Land Records of Baltimore County a Covenant to the Deed for the Property (in the form attached) by which the Petitioner agrees that the kitchen/cooking facilities contained in the in-law apartment shall be removed upon the first to occur: 1) the date on which Ms. Reed ceases to own the property, or 2) within 45 days of the principal dwelling and the in-law apartment no longer being occupied by members of the same immediate family.

- 4) The Petitioner shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management reasonable access to the in-law apartment to inspect for compliance with this Order.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:pz

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

COVENANT

WHEREAS, in the Petition for Special Hearing and Variance before the Zoning Commissioner of Baltimore County, Case No. 2011-0081-SPHA, Carol A. Reed, the Petitioner, in said hearing, requested a permit for an in-law apartment within an existing accessory building for the convenience of the owner, and additionally, a variance to permit the accessory building to be 22 (twenty-two) feet high in lieu of the maximum allowed 15 (fifteen) feet.

The Zoning Commissioner, by Order dated December 20, 2010, granted the request providing the following Covenant be added to the Deed, which Deed was recorded in the Land Records of Baltimore County at Liber 24998, Folio 395.

Carol A. Reed, hereby covenants that the accessory building shall be used as living quarters for herself or persons related by blood, marriage or adoption, and that such use shall terminate either at the death of Ms. Reed or upon the sale of the property, or if she should reside elsewhere, whichever occurs first. No subsequent purchaser shall maintain the in-law apartment for any reason or purpose without a subsequent special hearing which shall be subject to the terms and conditions contained herein.

AS WITNESS my hand and seal this _____ day of _____, 20__.

Carol A. Reed (SEAL)

STATE OF MARYLAND)
) To Wit:
COUNTY OF BALTIMORE)

I HEREBY CERTIFY that on this _____ day of _____, 20____,
before me, a Notary Public of the State of Maryland, in and for Baltimore County, personally
appeared Carol A. Reed, known to me or satisfactorily proven to be the person whose name is
subscribed to the within instrument, and acknowledged that she 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: