

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Oak Leaf Way; NW corner		
of Oak Leaf Way and Alma Road	*	DEPUTY ZONING
3 rd Election District		
1 st Councilmanic District	*	COMMISSIONER
(240 Oak Leaf Way)		
	*	FOR BALTIMORE COUNTY
Margaret Webster-Butler and Ella Webster		
<i>Petitioners</i>	*	CASE NO. 2011-0096-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 owners of the subject property, Margret Webster-Butler and Ella Webster. Petitioners are requesting Variance relief as follows:

- From Section 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) 1) to permit 2 as-built accessory structures to be located on the side and rear of the existing dwelling in lieu of the required in the rear in the third of the lot farthest removed from any street; and
- From Section 400.1.d(2) of the Zoning Commissioner’s Policy Manual to permit an accessory structure to be located 9 feet from the rear property line in lieu of the required 30 feet for a double frontage lot.

The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests were Petitioner Margaret Webster-Butler, Gaylord A. Butler, and Ella Webster. There were no Protestants or other interested persons 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

Management¹. A Code Inspections and Enforcement Correction Notice was issued to Petitioner on March 15, 2010 for multiple accessory structures in the rear yard. Hence, Petitioner filed the instant requests for variance relief.

Testimony and evidence offered revealed that the subject property is irregular shaped and contains approximately 9,529 square feet, more or less, zoned D.R.5.5. The property is located on the north side of Oak Leaf Way, with frontage also to the north at Lansdowne Road and to the east at Alma Road. The property is improved with a two-story single-family dwelling with a one car attached garage and concrete driveway. As shown on the site plan and the aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 2, there are also several accessory structures that are the subject of the instant zoning relief.

Petitioners indicated they have a number of household and lawn care items in need of storage and also have motorcycles that need to be stored inside. As such, they have placed several accessory structures on the property, primarily in the rear yard, but also projecting into the side yard. They desire to legitimize these existing conditions with the instant variance request. In support of the requested relief, Petitioners pointed to the fact that their property and the next door property were developed much later than the surrounding neighborhood. Their lot sizes and homes are slightly bigger and in some cases, their single-family homes are much different than the predominantly townhouse and apartment communities nearby. This is also illustrated by the aerial photograph of the community that was marked and accepted into evidence as Petitioner's Exhibit 3. Petitioners also pointed to the unusual configuration of the property, whereby it has frontage on three public streets. While some of the nearby homes have frontage to the north on Lansdowne Road and Oak Leaf Road, theirs is the only lot with frontage also on Alma Road. Because of privacy concerns with all of the road frontage and theft concerns

¹ Case No: CO-0074017

due to their exposure on three sides, Petitioners believe their property is set apart from others in the community and warrants variance relief.

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 October 18, 2010 which indicates they have reviewed the request, site plan and visited the site. The rear yard of the subject property seems to have been overtaken by a collection of miscellaneous items. It resembles a junkyard. The existing accessory structures are unattractive and there is unenclosed junk and debris disbursed about. There are also many unenclosed items in the rear yard that do not appear to be junk, however, they contribute to the clutter in the yard area. The Planning Office does not support the requested variances. The property should be brought up to code and compliant with all regulations.

Based upon the testimony and evidence presented, I am persuaded to grant the request for 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. As Petitioners indicated, their significant road frontage, combined with the relative size and dwelling style as compared with others in the neighborhood, renders their property unique in a zoning sense. I also find that practical difficulty and undue hardship would befall Petitioners if the requested variance relief were not granted. Finally, I also find this variance request can be granted in strict harmony with the spirit and intent of the Zoning Regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare. Because I am mindful of the comments from the Office of Planning as to the condition of the property and the storage of miscellaneous items that resembles a junkyard, I shall impose a condition that the property must be brought up to Code in all respects and Petitioners shall make the premises reasonably available for County Inspectors to achieve that purpose.

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 requests should be granted.

THEREFORE, IT IS ORDERED this 8th day of December, 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 two as-built accessory structures to be located on the side and rear of the existing dwelling in lieu of the required in the rear in the third of the lot farthest removed from any street; and from Section 400.1.d(2) of the Zoning Commissioner's Policy Manual to permit an accessory structure to be located 9 feet from the rear property line in lieu of the required 30 feet for a double frontage lot, be and are hereby **GRANTED**, subject to the following:

1. Petitioners may apply for 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 shall ensure that the subject property is brought up to Code in all respects, particularly as to the storage of junk and miscellaneous materials on the property. Petitioners shall clean up the property to a neat and orderly appearance and shall make the property available for inspection by County Code Inspectors during normal business hours in order to ensure compliance with the County Code and these Regulations.

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