

**IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND VARIANCE**

NW side of Emmanuel Court; 788 feet	*	DEPUTY ZONING
SW of Windsor Mill Road	*	COMMISSIONER
2 nd Election District	*	FOR BALTIMORE COUNTY
4 th Councilmanic District		
(2006 Emmanuel Court)		

Frederic Charles Hilnbrand *

Petitioner *

Case No. 2011-0107-SPHA

* * * * *

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 Frederic C. Hilnbrand, the legal property owner. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a proposed accessory building with a footprint that is larger than the principal use dwelling and a personal use car lift within the proposed accessory building. Petitioner is also requesting Variance relief from Section 400.3 of the B.C.Z.R to permit a proposed accessory building with a height of 26 feet in lieu of the maximum allowed 15 feet. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested relief was Petitioner Frederic C. Hilnbrand. Also appearing in support of the relief was Jack Kelly, On-Scene Coordinator with the U.S. Environmental Protection Agency (“EPA”), Region III, in Philadelphia, PA. Appearing as an interested citizen was Reverend Lin Taylor of the adjacent property at 2020 Emmanuel Court.

Testimony and evidence offered revealed that the subject property is irregular shaped and consists of approximately 0.928 acre, more or less, zoned D.R.5.5. The property is located at the

end of Emmanuel Court on the northwest side, southwest of Windsor Mill Road, in the Woodlawn area of Baltimore County. As shown on the site plan, the property is improved with an existing two-story frame dwelling. It is also improved with an unusual multi-story large metal and block building. Photographs of the large building were marked and accepted into evidence as Petitioner's Exhibits 3 and 4.

The property was purchased by Petitioner's parents in 1985 from the Powhatan Mining Co. They lived in the residential dwelling and used the large multi-story mill-like structure for storage and the attached one-story garage-like structure for auto repair, heavy equipment storage, and a body shop. Petitioner believes that the zoning once allowed for the large buildings and industrial uses, but by 1995, the zoning had changed to D.R., such that the business uses were no longer permitted. Petitioner indicated he was in an accident in 1997 and as a result became permanently disabled. According to tax records, he acquired the property from his parents in 2007. Petitioner now utilizes the garage-like structure as a personal garage and for storage of furniture and household items as well as a number of antique vehicles that he works on for his own pleasure and personal use. Photographs of the garage-like structure were marked and accepted into evidence as Petitioner's Exhibits 5A and 5B.

According to testimony provided by Mr. Kelly with the EPA as well as internal EPA Memorandums in support of EPA clean-up and the proposed demolition and compensation, each dated June 8, 2010 and marked and accepted into evidence as Petitioner's Exhibits 9 and 10, respectively, the property was owned by the Powhatan Mining Company from approximately 1917 to 1985. The company operated a processing facility at the site to convert asbestos ore to a finished product for use in a variety of industrial and commercial materials. The ore was mined in Maryland until mines were exhausted in the 1940's and then was brought in from other States. The company went into bankruptcy in 1984.

In support of the special hearing and variance requests, Mr. Kelly explained that the Maryland Department of the Environment (“MDE”) brought the site to the EPA’s attention in late 2008. Soils testing and investigation revealed that the former facility and adjacent grounds are highly contaminated with loose, friable asbestos. As a result, the EPA proposes to demolish the former processing facility and clean up the site. As depicted on the site plan, they also propose to compensate Petitioner by constructing a replacement 60 foot by 75 foot garage-like accessory structure on the property for Petitioner’s storage needs, and to move a vehicle lift in the existing garage-like building to the new building. A conceptual rendering of the replacement structure was marked and accepted into evidence as Petitioner’s Exhibit 6. Because the proposed accessory structure would be substantially larger than the existing dwelling on the property, special hearing relief is necessary to approve an accessory building with a footprint that is larger than the principal use dwelling, as well as to approve the car lift within the proposed new building. Variance relief is also necessary because, according to Petitioner and Mr. Kelly, a replacement to the existing garage-like building that would be of adequate size requires a roofline and pitch with a height of 26 feet, in excess of the 15 foot height permitted.

Also testifying regarding the requested relief was Reverend Lin Taylor on behalf of the church located adjacent to the subject property and owned by Emmanuel Ministries International, Inc. Reverend Taylor indicated that he was glad the EPA had pledged to clean up the site and was not opposed to the replacement accessory building, *per se*; however, he did express concerns over the potential visual impact of the new building on the surrounding neighborhood and suggested that a fence be erected along the Emmanuel Court frontage, especially if the nearby adjacent areas of Emmanuel Court are eventually developed residentially.

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 which indicates that after reviewing Petitioner’s request and accompanying site plan, the property is the subject of Environmental Protection Agency Super Fund clean up effort. The EPA has a policy of replacing existing structures when removal actions are approved. The Office of Planning does not oppose the requested variance and special hearing provided: 1) Petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities; 2) the accessory structure shall not be used for commercial purposes.

After due consideration of the testimony and evidence presented, I am persuaded to grant the relief requested. The history of this property and the after-effects of the prior use present an unprecedented situation that now confronts the EPA and Petitioner. Knowing what we have known about asbestos and its effects over the years, it is almost unimaginable that such an asbestos processing facility would have existed in this residential area within the last 30 years or so. Realizing that this property has contamination that could potentially affect other nearby properties, the EPA has taken a responsible approach to remediation of the situation and providing Petitioner with an equitable alternative to replace the existing building. In my view, these constitute special circumstances or conditions that are peculiar to the land or structure which is the subject of the variance request and also render the property unique in a zoning sense.

I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. If the requested relief for an accessory structure height of 26 feet in lieu of 15 feet were denied, Petitioner would lose the beneficial use of a building that is currently utilized for storage of his antique/historic vehicles as

well as other equipment and personal items, without an adequate replacement. Finally, I find the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. It is noteworthy that the Office of Planning supports the requested relief subject to certain conditions that will be expounded on further in this Order. As to the requested special hearing, I am persuaded to grant that relief as well. The mill-like processing facility building and the garage-like building are substantially larger than the dwelling and have existed on the property since the 1920's, and could be deemed to be nonconforming. For reasons that are self evident, these buildings are slated for removal, to be replaced with a garage-like building of similar size. Given the unusual circumstances of this case, special hearing relief is appropriate in this instance to permit an accessory structure with a footprint larger than the principal dwelling, as well as to permit the personal car lift within that new accessory structure. Finally, though I am mindful of Reverend Taylor's suggestion of a fence along the Emmanuel Road frontage to lessen the visual impact of the accessory structure, based on my review of the evidence, including the photographs of the property and the site plan, I do not believe a fence is necessary at this point. To some extent, I think a fence would bring even more attention to the property and would close it off from the rest of the street. I believe the proposed accessory structure is set back far enough from the street not to have a significant visual impact to passersby or future development.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner's special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 26th day of November, 2010 that Petitioner's Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a

proposed accessory building with a footprint that is larger than the principal use dwelling, and a personal use car lift within the proposed accessory building, be and are hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's Variance request from Section 400.3 of the B.C.Z.R. to permit a proposed accessory building with a height of 26 feet in lieu of the maximum allowed 15 feet, be and is hereby **GRANTED**.

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that he may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The accessory structure shall not be used for commercial purposes.

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