

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E side of Moline Court; 806 feet NE	*	DEPUTY ZONING
of Moline Court and Davis Avenue	*	COMMISSIONER
2 nd Election District	*	FOR BALTIMORE COUNTY
4 th Councilmanic District	*	
(14 Moline Court)	*	
Charles L. and Mary W. Omlor	*	CASE NO. 2011-0135-A
<i>Petitioners</i>		

* * * * *

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, Charles L. and Mary W. Omlor. Petitioners are requesting Variance relief from Section 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory building in the front yard in lieu of the required rear yard. 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 request was Petitioner Charles L. Omlor. There were no Protestants or other interested persons in attendance.

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 September 2, 2010 for not obtaining a permit for an accessory structure, junk and debris in the yard, and unlicensed and inoperable motor vehicles. Hence, Petitioner filed the instant request for a variacne to permit a shed in the front yard in lieu of rear yard.

Testimony and evidence offered revealed that the subject property is irregular in size, contains 5.65 acres zoned RC 2 and is located on the east side of Moline Court northeast of Davis

¹ Case No: CO-0083050

Avenue in the Woodstock area of the County. The property is improved with an existing single-family dwelling containing 1,820 square feet, a gazebo, and an older home that has been on the property for many years and is in a dilapidated condition.

Petitioners live on Moline Court; however, the property is accessed via a private drive from the cul-de-sac of Moline Court. This private driveway is approximately 300 feet long. Petitioners propose to construct a barn measuring 20 feet x 30 feet in size to be located in the northwest section of the property. An aerial photograph was accepted into evidence and marked as Petitioners' Exhibit 2 shows that the proposed accessory structure will be completely hidden from view by the dense tree cover that exists in that area of the property. North of Petitioners' property is a farm containing 140 acres with the dwelling 1,700 feet from the Petitioners' rear property line. West of the Petitioner's property is a farm containing 30 acres and no dwelling is within 500 feet of the Petitioner's property line. The subject property is surrounded by farmland.

Petitioner submitted a document stating that neighbors, who have connecting property, do not have any objection to the variance request. These neighbors are identified as Mrs. Pam Pahl of 2730 Melrose Avenue, Mr. and Mrs. Larry Matthews of 12 Moline Court and Mr. and Mrs. Decker of 10320 Davis Avenue. This document was marked and accepted into evidence as Petitioners' Exhibit 3. Mr. Omlor stated that in response to the code violation, he has begun to clean up his property by removing the junk and debris and the unlicensed and inoperable vehicles.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Resource Management dated December 1, 2010 which indicates that development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains, and must comply with the Forest Conservation Regulations. The

proposed shed (building permit) will be reviewed by Groundwater Management for well and septic setbacks. If the proposed development involves clearing of forest then a single lot declaration of intent may be required to be submitted and approved prior to issuance of any permits. A Forest Buffer Easement was recorded on this lot in Baltimore County Land Records and the Declaration of Protective Covenants apply.

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. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

Based upon the testimony and evidence presented, I am persuaded to grant the request to allow the accessory structure (barn/shed) to be positioned in the front yard. There is adequate evidence that the subject property is peculiar, unusual and unique. Additionally, a property owner has a common law right to use his property in a manner so as to realize its highest and best use. *See Aspen Hill Venture v. Montgomery County Council* 265 Md. 303 (1972). A shed/barn is a reasonable accessory use to a residence especially a property containing 5.656 acres.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

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 request should be granted.

THEREFORE, IT IS ORDERED this 6th 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 an accessory building in the front yard in lieu of the required rear yard be is 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. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
3. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
4. If the proposed development involves clearing of forest then a single lot declaration of intent may be required to be submitted and approved prior to issuance of any permits.
5. A Forest Buffer Easement was recorded on this lot in Baltimore County Land Records and the Declaration of Protective Covenants apply.

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