

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Lucerne Road; 305 feet		
S of the c/l of Lausanne Road	*	OFFICE OF ADMINISTRATIVE
2 nd Election District		
4 th Council District	*	HEARINGS FOR
(8528 Lucerne Road)		
	*	BALTIMORE COUNTY
Rodney Wooten		
Petitioner	*	CASE NO. 2012-0075-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County for consideration of a Petition for Variance filed by the legal owner of the property, Rodney Wooten. The Petitioner is requesting Variance relief from Section 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory structure (shed) to be located in the side yard in lieu of the required rear yard. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the variance request was Petitioner Rodney Wooten and his wife Wanda Wooten. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R. There were no Protestants or other interested persons in attendance and the file does not contain any letters of protest or opposition.

This matter came to the OAH as a result of a complaint registered with the Code Enforcement Division of the Department of Permits, Approvals and Inspections¹. A Code Inspections and Enforcement Correction Notice was issued to Petitioner on July 11, 2011, to limit the accessory structures on the property to one and to require that structure to be located in the rear yard of the property. Hence, Petitioner filed the instant Petition.

¹ Case No: CO0097553

As an initial matter, the B.C.Z.R. does not restrict the owner of a dwelling to one accessory structure on his property. In this case, the Petitioner has both a gazebo and shed (as shown on Exhibit 1) and both are in the front/side yard of the home. The Code Enforcement notice (and variance petition) focused solely on the shed, but the relief ultimately granted herein shall be equally applicable to both the shed and gazebo. According to Petitioner, the gazebo has been in its present location for more than 15 years.

Testimony and evidence offered revealed that the subject property is improved by a dwelling of 1,280 square feet. The lot contains approximately 8,811 square feet and is zoned DR 5.5. The Petitioner's home is situated on a corner lot, and the dwelling is positioned towards the rear of the lot. In addition, the home is oriented on the lot in such a manner that Petitioner has a very small "rear yard" area.

The Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. There were no adverse comments received from any of the County reviewing agencies.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested 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 noted above, the Petitioner's home is on a corner lot, and the home is oriented in such a fashion – which is unlike that of adjoining properties, See Exhibit 2 -- that imposes significant site constraints and leaves Petitioner with very little rear yard area.

I further find that the granting of the relief as set forth herein can be accomplished without injury to the public health, safety, and general welfare. Therefore, in all manner and form, I find that variance relief can be granted in accordance with the requirements of Section 307 of the

B.C.Z.R. as articulated in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

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

THEREFORE, IT IS ORDERED, this 15 day of November, 2011 by this Administrative Law Judge that Petitioner's Variance request from Section 400.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an accessory structure (shed) to be located in the side yard in lieu of the required rear yard, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order, however the Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:pz