

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
S side of Middleborough Road, corner of	*	OFFICE OF
Middleborough and Hilltop Roads		
(1703 Middleborough Road)	*	ADMINISTRATIVE HEARINGS
15 th Election District		
6 th Council District	*	FOR BALTIMORE COUNTY
Gary Dean and Joedy Ann Welch	*	CASE NO. 2012-0280-SPHA
Petitioners		

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Hearing and Variance filed by the legal owners of the subject property, Gary Dean and Joedy Ann Welch. The Petitioners are requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory building (garage) having a footprint of 1,600 square feet which is larger than the 816 square feet of the principal use (dwelling). The Petitioners are also seeking variance relief from Sections 400.1 and 400.3 of the B.C.Z.R., to permit an accessory building (garage) to be located other than in the third of the lot farthest removed from any street with a height of 19'-4" in lieu of the permitted 15'. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing held for this case were Petitioner Gary Dean Welch and David Billingsley with Central Drafting & Design, Inc., the consultant who prepared the site plan and is assisting the Petitioners through the permitting process. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the

file does not contain any letters of protest or objection.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. No adverse comments were received from any of the County reviewing agencies.

Testimony and evidence revealed that the subject property is 2.016 acres (87,800 square feet) and zoned DR 3.5. The property is comprised of two lots (Nos. 59 and 60), both of which are narrow and deep. Lot 60 is also irregularly shaped, due to the fact Baltimore County several years ago took through eminent domain a portion of Petitioner's property for construction of Hilltop Road. Petitioner wants to construct a 40' x 40' garage on Lot 59, positioned 40' behind the existing garage. Petitioner said it was a prefabricated structure, and was designed like a pole barn. See Exhibit 9. The Petitioner will use the garage to store and work on his historic cars and motorcycle, and the height variance will allow for a vehicle lift to be installed.

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 Petitioners. Indeed, Petitioner's lot is extremely deep, and if the regulations were observed, they would need to construct the garage over 300' from their dwelling.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioners have met this test, as noted above.

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. This is amply demonstrated by the lack of community opposition, as well as the absence of comments by County reviewing agencies.

I also believe that the Petition for Special Hearing should be granted. The Petitioners have an extremely modest home (816 square feet), and they plan in the future to enlarge the dwelling. But at present, special hearing relief is needed because the proposed garage will be larger than the dwelling, and there is no indication that the grant of relief will be detrimental to the community's health, safety and welfare. The proposed garage will be attractively designed with a pitched roof, and will be situated on a rather large lot (1.37 acres). The garage will also be positioned far away from the adjacent dwellings at 1705 and 1707 Middleborough Road, and will not interfere with the neighbors' use and enjoyment of their homes.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 26 day of June, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory building (garage) having a footprint of 1,600 square feet which is larger than the 816 square feet of the principal use (dwelling), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 400.1 and 400.3 of the B.C.Z.R., to permit an accessory building (garage) to be located other than in the third of the lot farthest removed from any street with a height of 19'-4" in lieu of the permitted 15', be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. The Petitioners may apply for their building permit and may be granted same upon receipt of this Order. However the Petitioners are hereby made aware that proceeding at this time is at their 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 Petitioners will be required to return and be responsible for returning said property to its original condition.
2. The 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
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:pz