

IN RE: PETITION FOR VARIANCE
(15815 Falls Road)
5th Election District
3rd Councilmanic District
Roger L. and C. Gregory Elliott
Petitioners

* BEFORE THE OFFICE
* OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2013-0052-A**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the legal owners of the subject property, Roger L. and C. Gregory Elliott. The Petitioners are requesting Variance relief pursuant to Sections 400.1 and 400.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing shed and barn to be located in the front yard in lieu of the required rear yard, and for the barn to have a height of 42' in lieu of the permitted 15' as an accessory structure. 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 was Roger L. Elliott and Alonzo Childress. 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 opposition. In fact, Petitioners' immediate neighbor indicated she supports the petition. (Exhibit 3).

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received on October 2, 2012 indicating that any future building permits will need to be reviewed by Groundwater Management, since the property is served by

well and septic.

Testimony and evidence revealed that the subject property is 39.348 acres and is zoned RC 2. The Petitioners are in the process of a minor subdivision on the property (creating just one additional lot), and in doing so were informed by county officials they would need variance relief for the existing barn, which is approximately 100 years old.

Based upon the testimony and evidence presented, I will grant the request for variance relief. 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 seen on the site plan, the property is uniquely shaped and the Petitioners are dealing with existing site conditions. If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty and/or hardship, in that they would need to raze a barn that has stood for over 100 years. 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 demonstrated by the lack of opposition from the community and the lack of negative comments from Baltimore County reviewing agencies.

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

THEREFORE, IT IS ORDERED, this 7th day of November, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Sections

400.1 and 400.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing shed and barn to be located in the front yard in lieu of the required rear yard, and for the barn to have a height of 42' in lieu of the permitted 15' as an accessory structure, be and is hereby GRANTED.

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:dlw