

IN RE: PETITION FOR VARIANCE

(**11217 Liberty Road**)

2nd Election District * BEFORE THE OFFICE

4th Councilmanic District * OF ADMINISTRATIVE

Alan and Bernice A. Poole * HEARINGS FOR

Petitioners * BALTIMORE COUNTY

* CASE NO. 2013-0062-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, Alan and Bernice A. Poole. The Petitioners are requesting Variance relief pursuant to Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing garage with a height of 17.5' 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 was Alan Poole. 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.

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

Testimony and evidence revealed that the subject property is 2.01 acres and is zoned RC 2. The Petitioners purchased the home in 2011, and begun constructing the garage in March 2012. Recently, upon final inspection of the garage by Baltimore County, the inspector informed Mr. Poole that the garage was 17.5' in height, and that variance relief was therefore needed.

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.

The property is uniquely shaped, rural, and abuts a 28-acre farm/agricultural use. If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty and/or hardship, given that they would be required to reconstruct the garage. 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. In fact, both of Petitioners' neighbors indicated they "had no issues or concerns with the height of the garage." Exhibit 2. Mr. Poole indicated he was unaware of the height limitation, and I found him to be a credible witness.

Although the Office of Planning did not make any recommendations related to the garage height and usage, I will impose conditions that the accessory structure not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or bathroom facilities, and not be used for commercial purposes.

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 13th day of November, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing garage with a height of 17.5' in lieu of the permitted 15', be and is hereby GRANTED.

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

1. The Petitioners may apply for any required permits 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 Petitioners 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:dlw