

IN RE: PETITION FOR VARIANCE
(1652 Glencoe Road)
10th Election District
3rd Councilman District
William and Ann Hach
Petitioners

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0110-A

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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, William and Ann Hach. The Petitioners are requesting Variance relief from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an accessory structure (windmill) with a tower height of 30 ft. and a total blade height of 40 ft. in lieu of the allowed 15 ft. height. 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 held for this case was Ashley Hach and Bruce E. Doak, with Bruce E. Doak Consulting, LLC, the consulting firm that prepared the site plan. Citizens appearing at the hearing were W. Craig Kenney, Elaine Iglehart and Kirsten Burger. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the record of this case. The only substantive comment was from the Department of Planning, (DOP) which did not oppose the petition, but provided a list of conditions it believed should be included in any grant of relief.

Testimony and evidence revealed that the subject property is 20 +/- acres and is zoned RC 2 and RC 7. The property is improved with a dwelling constructed in 1881, as well as several out buildings, including a barn, guest house, etc. Since acquiring the property, the Petitioners have undertaken substantial renovations and improvements, and the property is attractive and has an estate-like quality. In that vein, the Petitioners want to construct a windmill to power a well pump to provide water to horses and farm animals on site. Mr. Kenney, a neighbor of Petitioners, testified that the proposed windmill (shown in renderings submitted as Exhibits 6A-C) would be aesthetically pleasing and is also historically appropriate, since windmills of this type were frequently used on farms in the 1800's. Indeed, Mr. Kenney believes that such a windmill was previously used on this property (as well as his property, which adjoins Petitioners' lot and was subdivided from the same original parcel), given that there are wells on site that, in the 1800's, were commonly accessed by windmills.

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 unquestionably unique: it is a 20 +/- acre parcel of irregular dimensions, with an historic dwelling (Filston Manor) that has been designated on the County's final landmarks list. Mr. Doak indicated the owners (and Mr. Kenney) believe the home was designed by the same architect who designed President Roosevelt's home at Sagamore Hill in New York,

and a photo of that dwelling was admitted as Exhibit 4. As such, I believe the property possesses the requisite “uniqueness” to qualify for variance relief under Maryland Law.

If the B.C.Z.R. were strictly enforced, the Petitioners would indeed suffer a practical difficulty and/or hardship, since they would be unable to complete their renovations as planned. 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.

One final issue requires some discussion: whether the proposed windmill qualifies as an “accessory structure” under the B.C.Z.R. I am familiar with the proposed legislation (Bill No. 62-10) that would have provided regulations for “small wind energy systems,” and I also know that legislation was later withdrawn and never re-introduced. I also reviewed several previous zoning cases concerning the issue, and understand the Office of People’s Counsel does not believe windmills are “accessory” structures, given that they are not “customarily incident and subordinate to” the principal structure (most often a dwelling) on site. I certainly agree that turbine-style windmills (of the sort one notices on mountain ridges when driving on highways in Western Maryland) used to generate electricity, are not “customarily” found in residential settings and could present a host of problems in such a setting.

But the structure here is a “farm windmill,” of the sort routinely found on farms and agricultural estates in the 1800 and 1900’s. See, e.g., *Johnecheck v. Bay Township*, 119 Fed. Appx. 707 (6th Cir. 2004) (“small windmills long have been used to supply water to farming operations from wells”). The Petitioners are in the process of restoring Filston Manor to its original grandeur, and the proposed windmill (as shown in Exhibit 7) would not be used by Petitioners to

generate electricity for residential use and its design is historically accurate and aesthetically pleasing, which would not be the case if Petitioners proposed to install a modern wind turbine. For these reasons, I believe the proposed windmill is the type of structure that was “customarily” and commonly seen on farms and rural estates such as Filston Manor, and it therefore constitutes an “accessory structure” under B.C.Z.R. § 101.1

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 9th day of January, 2013 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 accessory structure (windmill) with a tower height of 30 ft. and a total blade height of 40 ft. in lieu of the allowed 15 ft. height, 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. Petitioners must, in their construction and operation of the windmill, comply with the ZAC comments of DOP, attached as an exhibit hereto.

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:sln