

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(4433 Foerster Road)	*	OFFICE OF
13 th Election District		
1 st Councilmanic District	*	ADMINISTRATIVE HEARINGS
Deborah & Kenneth L. Wolf, Jr	*	FOR BALTIMORE COUNTY
	*	Case No. 2013-0154-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Deborah and Kenneth L. Wolf, Jr., legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to allow an accessory structure to be larger than the principal dwelling. The variance relief sought to permit an accessory structure to be placed in the front yard in lieu of the required rear yard and to allow the height of the accessory structure to be 26 ft. in lieu of the maximum allowed 15 ft. 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 in support of the requests was Erika Luedtke, a builder who is assisting the Petitioners. 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 in attendance, and the file does not contain any letters of protest or opposition.

A Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP), which expressed concern regarding the proposed size of the pole barn.

The subject property is 37,597 square feet in size and is zoned DR 5.5. The property is improved with a single family dwelling, and is located at the terminus of Foerster Road. The

Petitioners would like to construct a pole barn on site, to accommodate Mr. Wolf's antique car collection.

The Petition for Special Hearing seeks approval of an accessory building large in size than the single family dwelling on site. The existing dwelling is modest in size (approximately 1,300 square feet) and the pole barn would be about 50% larger (no larger than 2,000 square feet). The Petitioners home is the last dwelling on a dead end street, and is bordered by I-895 and the Baltimore-Washington Parkway. The proposed barn will be situated next to a 50' wide easement area that contains mature trees and vegetation. In these circumstances, I do not believe the grant of relief would be injurious to the neighborhood.

Based upon the testimony and evidence presented, I will also 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).

The Petitioners have met this test. The subject property is nearly an acre in size, which is a large lot in a DR 5.5 zone. In addition, the property has irregular dimensions and an approximate 6' grade change from the front to the rear of the lot. These factors make the property unique. If relief were denied, the Petitioners would experience a practical difficulty, given they would have only a limited area in the rear yard in which to locate a rather small accessory building.

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. To ensure

the building is compatible with the neighborhood, I will impose a limitation on the size of the garage, as recommended by the DOP.

Pursuant to the advertisement, posting of the property, and the public hearing, and after considering the testimony and evidence offered, I find that Petitioners' Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED this 13th day of March 2013, by this Administrative Law Judge, that Petitioners' request for Special Hearing allow an accessory structure to be larger than the principal dwelling filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' Variance request from §§ 400.1 & 400.3 of the B.C.Z.R., to permit an accessory structure to be placed in the front yard in lieu of the required rear yard and to allow the height of the accessory structure to be 26 ft. in lieu of the maximum allowed 15 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would 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. No commercial activities of any kind shall be permitted in the proposed accessory building.
4. The proposed building shall be no larger than 2,000 SF.

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

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County