

IN RE: PETITION FOR VARIANCE
(2509 Butler Road)
8th Election District
3rd Councilman District
Michael and Charlene Petersen
Petitioners

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2013-0178-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 Michael and Charlene Petersen, the legal owners of the subject property. The Petitioners are requesting Variance relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit two proposed sheds and a proposed garage to be located in the front yard instead of the required rear yard. 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 Bruce Doak, 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 substantive Zoning Advisory Committee (ZAC) comments received from any County reviewing agencies.

Testimony and evidence revealed that the subject property is approximately 27 acres and is zoned RC 2. The property is now improved with a single family dwelling constructed in 1985, that the Petitioners plan to raze. In its place, they propose to construct a new home with various accessory structures, but to do so requires variance relief.

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 large parcel is oddly shaped and of irregular dimensions, as seen on the site plan. Exhibit 1. Thus, it is unique for zoning purposes.

If the B.C.Z.R. were strictly enforced, the Petitioner would indeed suffer a practical difficulty, given they would be unable to position the accessory structures where proposed. 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 County and/or community opposition. In addition, and as noted by Mr. Doak, the proposed improvements will be situated far back on the lot, such that they will not be visible to passing motorists on Butler Road. As such, I do not believe the relief will in any way negatively impact the community.

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 1st day of April, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit two proposed sheds and a proposed garage to be located in the front yard instead of the required rear yard, 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.

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