

IN RE: PETITION FOR ADMIN. VARIANCE
NW side of Cherry Hill Road; 194.3 feet NW
of the c/l of High Falcon Road
4th Election District
2nd Councilmanic District
(310 East Cherry Hill Road)

Robert and Allison Dahne
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **Case No. 2010-0203-A**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject property, Robert and Allison Dahne for property located at 310 East Cherry Hill Road. The variance request is from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (shed) to be located in the side yard in lieu of the required rear yard. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on January 25, 2010 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented. The Petitioners filed the supporting affidavit as required by Section 32-3-303 of the Baltimore County Code. In their affidavit, Petitioners indicate that due to the trees and landscape of the rear yard it is impractical to erect the shed in the rear yard. They request to place the shed on the driveway in the side yard for the following reasons: easier to access to house from shed; driveway would be foundation; shed siding to match house; no grading or tree removal necessary if shed is placed in side yard; and shed will not go past the front footprint of house.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated February 3, 2010 which indicates that the lot is an average size lot in the subdivision known as Suburbia approved in the 1950s. While the Planning Office appreciates the Petitioners' need for additional storage area, the location of the proposed shed in the side yard is not in keeping with the area. The Planning Office is of the opinion that the administrative variance should be denied.

In considering a request for variance, I must do so in accordance with the mandate of the Maryland Court of Special Appeals in the case of *Cromwell v. Ward*, 102 Md.App. 691 (1995) and their interpretation of Section 307 of the B.C.Z.R. In that case, the Court interpreted the regulation to require that a two-prong test be met in order for variance relief to be granted. First, it must be shown that the property is unique in some manner and that this uniqueness drives the need for variance relief. Second, upon the determination that the property is unique, it must then be considered whether strict compliance with the regulation would cause a practical difficulty upon the property owner and be unnecessarily burdensome.

Finally, I must also determine whether the request is within the spirit and intent of the zoning regulations and its impact, if any, on adjacent properties. Although I am certainly understanding and empathetic with Petitioners in their desire to install a shed for storage purposes, in my view, the configuration of the subject property, the orientation of the dwelling, and the lot size do not lend themselves to the installation of a shed as proposed on the site plan. The proposed shed measures 12 feet x 24 feet x 12 feet high. The size of the shed is more akin to a single car garage.

The Petitioners' property is similar in size to that of neighboring properties and the existing dwelling is also similarly situated on the property as that of the neighboring dwellings. The subject property is unremarkable when compared to other properties in the general vicinity. According to the Maryland Department of Assessments and Taxation, lots in the immediate vicinity range from 9,575 square feet (Petitioners' property) to 10,064 square feet. The enclosed areas of these dwellings is 962 square feet. An aerial photograph of the neighborhood demonstrates that no properties contain a shed of similar and significant size in the location as proposed on the site plan. There is no compelling reason that the shed cannot be placed in the rear yard.

Upon due consideration of the evidence presented in the instant case, I am not persuaded that the Petitioners have met this burden. Indeed, *Cromwell* requires that there must be a unique characteristic of the property at issue (i.e., topography, shape, configuration, etc.), in order for relief to be granted. The characteristics of the subject site are not unique when compared to other lots in the neighborhood. I believe the proposed structure and the attendant size will overcrowd the land and will have an adverse impact on the overall appearance and character of the neighborhood, especially vis-à-vis other properties nearby. I agree with the comments from the Office of Planning that the proposed shed at this location is too prominent and will be detrimental to the neighborhood. Hence, in my judgment, the request is not within the spirit and intent of the Zoning Regulations. Further, I cannot find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Thus, I am persuaded in this case to deny the variance.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be denied.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 2nd day of March, 2010 that a variance from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (shed) to be located in the side yard in lieu of the required rear yard is hereby DENIED.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz