

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
S/side of Northcliff Road, 845' SE of the		
c/line of Manor Road	*	OFFICE OF ADMINISTRATIVE
(4315 Northcliff Road)		
11 th Election District	*	HEARINGS FOR
3 rd Council District		
	*	BALTIMORE COUNTY
Gregory P. and Helene D. Belcher		
<i>Petitioners</i>	*	CASE NO. 2012-0198-A

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owners of the property, Gregory P. and Helene D. Belcher. The Petitioners are requesting Variance relief from §§ 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an accessory structure (garage/barn) to be located in the front yard with a height of 22 feet in lieu of the required rear yard and 15 feet height, respectively. 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.

This matter was originally filed as an Administrative Variance, with a closing date of March 19, 2012. On March 14, 2012, Ramprasad Venkatraman of 4310 Northcliff Road requested a formal hearing on this matter. The hearing was subsequently scheduled for Thursday, April 12, 2012 at 10:00 AM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson. In addition, a sign was posted at the property and an advertisement was published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. There were no adverse comments received from any of the County

reviewing agencies.

Appearing at the public hearing held for this case was Petitioners Gregory P. and Helene D. Belcher. Appearing in opposition to the request was Ramprasad Venkatraman and Nirmala Ramprasad, Petitioner's neighbors.

Petitioner Gregory Belcher testified that the subject property is located in Glen Arm, and is improved by a single family dwelling. The lot contains 3,212 square feet and is zoned RC 5. He further testified that his property is in a unique situation. First, the entire rear of the property is pasture land; once behind his residence it quickly slopes downward to the rear of the property. It consists primarily of red maple, cherry and Norwegian maple trees; some of which are approximately 100 feet high. There is no access road of any kind going behind the house. Their only road is that upon which they seek permission to place the subject accessory garage.

He further stated that they are mindful of the privacy needs of Protestant adjacent owners. To that end, Petitioners, who will be utilizing a "kit" to erect the proposed garage, propose to place no windows or doors on the rear of the garage facing Protestants' property. Additionally, they would agree to the imposition of a condition requiring them to construct a buffer between the rear of the proposed garage and the adjacent Protestant neighbors in a manner acceptable and approved by the Baltimore County Landscape Architect.

As to the height variance request, the witness noted that his existing home is 50 feet high, with vinyl wood veneer siding, the same as that proposed to be placed upon the accessory garage. The requested variance to a height of 20 feet for the structure would, in his opinion, compliment the height and bulk of the existing structure and would be sufficiently buffered. In an attempt to continue to "match" the two structures, the pitch of the proposed garage would also approximate that of the existing farm house. In sum, Petitioners belief that the shape and

topography of the site, along with the limitation generated by the placement of the well and septic and buffer constraints, renders the property sufficiently “unique” for purposes of their requested variances. He further takes the position that, without the requested variances, they will be unable to construct the accessory building which, by all other standards, they may do of right.

Protestant Ramprasad Venkatraman’s primary concern is privacy. Protestants felt that sunlight on the side of their house facing the proposed garage will be hindered by its location and size. They are also concerned about a subsequent loss of value of their home by virtue of Petitioners’ proposed garage, although they could not quantify any perceived loss.

Based upon the testimony and evidence presented, I will grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

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.

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 amply demonstrated by the lack of any negative comments from County agencies. While I am certainly sympathetic to Mr. Venkatraman’s concerns, I believe that the structure will be attractive and well built. In addition, one of Mr. Venkatraman’s primary concerns was that the addition would block his view. But under Maryland law, a homeowner

does not have a legally enforceable right to an unobstructed view across a neighbor's property, unless the homeowner secures a "view easement" or similar property interest. *Chesley v. City of Annapolis*, 176 Md. App. 413, 439 (2007).

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. Additionally, I will require that no windows, doors or other apertures will be placed on the rear of the proposed accessory structure facing adjacent Protestant neighbors; and that additional buffering be placed between the accessory structure and adjacent Protestants' residence which are deemed appropriate and acceptable to the Baltimore County Landscape Architect.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence offered by Petitioners, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED, this ___8___ day of May, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §§ 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an accessory structure (garage/barn) to be located in the front yard with a height of 22 feet in lieu of the required rear yard and 15 feet height, respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for their building permit 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. The accessory structure shall not be used for commercial purposes.
4. No windows, doors or other apertures will be placed on the rear of the proposed accessory structure facing adjacent Protestant neighbors.
5. Additional buffering shall be placed between the accessory structure and the adjacent Protestants' residence which are deemed appropriate and acceptable to the Baltimore County Landscape Architect.

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

Signed _____
LAWRENCE M. STAHL
Managing Administrative Law Judge for
Baltimore County

LMS/pz