

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(12305 Belair Road) *	OFFICE OF
11 <sup>th</sup> Election District	
3 <sup>rd</sup> Council District *	ADMINISTRATIVE HEARINGS
Ray & Doris Eller, <i>Legal Owners</i>	
Petitioners *	FOR BALTIMORE COUNTY
	<b>Case No. 2014-0205-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Ray & Doris Eller, the legal owners. The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit an accessory structure (pole barn) to be larger than the principal structure. The Variance petition seeks relief from B.C.Z.R. §§ 400.1 and 400.3: (1) to permit an accessory structure (pole barn) to be located in the front yard in lieu of the required rear yard placement; and (2) to permit an accessory structure (pole barn) to be 28 ft. high in lieu of the maximum height of 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 Petitioners’ son, Mark Eller. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A neighbor (Ila Christenbury) attended the hearing to obtain clarification of the relief being sought. There were no substantive Zoning Advisory Committee (ZAC) comments received.

The subject property is 13.9 acres in size and is zoned RC 5. The property is improved with a single family dwelling, which Petitioners have owned for nearly 40 years. Petitioners would like to have room to store an RV and boat, and to renovate a classic car. They propose to

have constructed on-site a post frame building (pole barn), although zoning relief is required before they can do so.

Based upon the testimony and evidence presented, I will grant the petition for variance.

To obtain variance relief a petitioner must show:

- (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 large and irregular shaped, as shown on the plan. Exhibit1. As such, it is unique. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty, given that Petitioners would be unable to construct a garage for storage of their vehicles. 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.

With regard to the petition for special hearing, it is not clear that such relief is even required. The house is 2,544 SF according to State records, while the garage would be 2,304 SF. As such, in terms of square footage, the proposed garage would not be larger than the single family dwelling. In terms of ground floor footprint, the 48' x 48' garage is larger than the single family dwelling. Accordingly, I will grant the petition for special hearing to allow the proposed accessory building to have a larger footprint than the dwelling. Mr. Eller presented a Google Earth photo which shows that the 14 acre site is heavily wooded, and the proposed building would not be visible to neighbors. In these circumstances, I do not believe granting the petition would be injurious to the community in any way.

THEREFORE, IT IS ORDERED this 5<sup>th</sup> day of June, 2014, by this Administrative Law

Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to permit an accessory structure (pole barn) to be larger (in ground floor area) than the principal structure, be and is hereby GRANTED .

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §§ 400.1 and 400.3: (1) to permit an accessory structure (pole barn) to be located in the front yard in lieu of the required rear yard placement; and (2) to permit an accessory structure (pole barn) to be 28 ft. high in lieu of the maximum height of 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 proposed 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.

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

JEB/sln

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County