

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(542 Back River Neck Road)	*	OFFICE OF
15 <sup>th</sup> Election District		
6 <sup>th</sup> Councilmanic District	*	ADMINISTRATIVE HEARINGS
Henry John & Donna Marie Nooft		
Petitioners	*	FOR BALTIMORE COUNTY
	*	Case No. 2014-0009-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 Henry John & Donna Marie Nooft, 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) larger than the principal building (single family dwelling). The Variance petition seeks relief from B.C.Z.R. §§400.1 and 400.3 to permit an accessory structure (pole-barn) to be located in the side yard in lieu of the required rear yard, with a height of 22 ft. in lieu of the maximum permitted 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 Norbert M. Porter, the contractor hired by the Petitioners. The file reveals that the Petition was advertised and the site was posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance.

The only substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Environmental Protection and Sustainability indicating that the property is located within the Chesapeake Bay Critical Area. As such, the Petitioners must comply with the Critical Area regulations.

The subject property is approximately 0.7 acres in size and is improved with a single family dwelling constructed in 1985. The Petitioner owns heavy equipment and trailers he uses for business and pleasure. He would like to construct a pole barn (70' x 30') to store this equipment, but needs zoning relief to do so.

As explained by Mr. Porter, the State Highway Administration (SHA) acquired through condemnation a large portion of the property that once belonged to the Petitioners, and constructed Md. Rt. 702, as shown on the plan. The Petitioners' property, situated at the end of a private gravel drive, abuts this highway. In these circumstances, I do not believe that the size of the pole barn (relative to the Petitioners' home) would negatively impact any of the surrounding neighbors. As such, the Special Hearing relief will be granted

Based upon the testimony and evidence presented, I will also grant the petition for variance. 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 parcel is of irregular dimensions, and is therefore unique. If the regulations were strictly interpreted the Petitioners would experience a practical difficulty given they would be unable to construct the accessory building in the location proposed.

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 9<sup>th</sup> day of September 2013, by this Administrative Law Judge, that Petitioners' request for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit an accessory structure (pole-barn) larger than the principal building (single family dwelling), be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' request for Variance relief to permit an accessory structure, (pole-barn) to be located in the side yard in lieu of the required rear yard, with a height of 22 ft. in lieu of the maximum permitted 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 accessory building may not be used for commercial purposes.
3. Petitioner 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.

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