

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(16301 Dark Hollow Road)		
5 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
3 <sup>rd</sup> Council District		
Morris & Jody Harden	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2017-0230-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Morris and Jody Harden, owners of the subject property (“Petitioners”). Petitioners are requesting variance relief pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to permit an accessory structure (pole barn) to be erected with a height of 18 ft. in lieu of the maximum allowed height of 15 ft.; and (2) to permit an accessory structure to be located in the side yard in lieu of the required rear yard. A site plan was marked as Petitioners’ Exhibit 4.

Morris & Jody Harden appeared in support of the petition. Robin Zimmerman, who resides at 16303 Dark Hollow Road and was represented by Debra Dopkin, Esq., opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the County reviewing agencies.

The site is approximately 4.03 acres in size and zoned RC-2. The property is improved with a single-family dwelling (2,744 sq. ft.) constructed in 1987. Petitioners propose to construct an accessory building (44’x36’x18’) for storage of a trailer, lawn equipment and household items. Petitioners explained the proposed side yard location would be more convenient and less

expensive than if the structure was in the rear of their home, which would require grading and extension of the existing driveway.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Though Petitioners own an attractive home on a large, open lot, there are no inherent attributes which render the property “unique” as that term is defined under Maryland law. In the zoning context “unique” has a “customized meaning” to include shape, topography, subsurface conditions, environmental factors, historical significance, etc. *North v. St. Mary’s County*, 99 Md. App. 502, 512 (1994). None of the evidence presented by Petitioners tended to show the property was unlike others in the vicinity based on one or more of these attributes. Indeed, surveyor Bruce Doak testified (on behalf of the Protestant) the shape and size of the subject property is similar to many surrounding properties. Petitioners also conceded they could locate the garage in the rear of their home, although it is undisputed this would greatly increase the cost of the project.

In a contested variance case the petitioner faces an uphill battle. In fact, I was unable to locate a Maryland appellate court opinion from the last twenty years which upheld the grant of a variance. Under Maryland law, a variance should be granted “sparingly” since it is “an authorization for [that] ...which is prohibited by a zoning ordinance.” *Cromwell*, 102 Md. App. at 699. As such, I believe the petition must be denied.

THEREFORE, IT IS ORDERED, this 3<sup>rd</sup> day of **May, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief of the Baltimore County

Zoning Regulations (“B.C.Z.R”) as follows: (1) to permit an accessory structure (pole barn) to be erected with a height of 18 ft. in lieu of the maximum allowed height of 15 ft., and (2) to permit an accessory structure to be located in the side yard in lieu of the required rear yard, be and is hereby DENIED.

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

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:sln