

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(17111 Hunter Green Road)		
5 th Election District	*	OF ADMINISTRATIVE
3 rd Council District		
Alan D. & Brittany M. Keller	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	CASE NO. 2017-0286-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Alan D. & Brittany M. Keller, owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit an existing detached accessory building (storage shed) with a height of 18 ft. in lieu of the maximum allowed 15 ft. and if necessary, to permit said existing detached accessory building (storage shed) to be located in the third of the lot closest to the side street in lieu of the required third of the lot farthest removed from the side street.

Alan & Brittany Keller and surveyor Bruce Doak appeared in support of the petition. Lawrence E. Schmidt, Esq. represented the Petitioners. Neil J. Lanzi, Esq. represented neighbors opposing 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 subject property is approximately three acres in size and zoned RC 2. The property is improved with a single family dwelling, pool, and two accessory buildings. This case concerns the larger of the two accessory buildings: a pole barn constructed this year.

Owner Brittany Keller described the protracted process by which the building was

constructed, which necessitated the filing of three zoning petitions. The witness testified the building was 90% complete when Petitioners received a notice from Baltimore County that their permit had been revoked. This led to the filing of the third petition (captioned above) on or about April 21, 2017. Ms. Keller stated her home has very little storage area, and the accessory building would be used for storage of household items, furniture and hobby equipment. She believes the subject property is unique due to its size, shape, topography, forest and a stream that runs through the rear of the site.

Protestants described the building as an “eyesore” and believe it is out of place in this neighborhood. They stated Petitioners have large parties at their home with friends camping out in tents in the yard, and they fear the accessory building would be used for similar purposes. Mr. Doak, who was accepted as an expert, opined Petitioners’ property is not unique. In support of his opinion he presented aerial photographs which he believes show other lots in the community have a similar size and shape. Prot. Ex. Nos. 6 & 7. He also testified several other properties in the area are forested, have streams in the rear yard and grade changes (i.e., slopes) across the lots.

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).

I am persuaded by Mr. Doak’s testimony, and do not believe the subject property is unique, at least for purposes of the height variance. Even assuming the property is unique Petitioners could not establish that such uniqueness generated the need for a height variance. As such the petition for a height variance will be denied.

But I believe the second variance request pertaining to the location of the pole building stands on a different footing, for at least two reasons. First, Mr. Doak (Protestants' expert) testified that in his opinion there is nowhere on this "corner lot" where Petitioners could construct an accessory building without variance relief. Mr. Doak conceded this fact--in and of itself—justifies the grant of a variance.

Secondly, determining exactly where an accessory building can be placed on a corner lot using the B.C.Z.R. and Zoning Commissioner's Policy Manual ("Z.C.P.M.") is a frustrating and confusing (if not futile) exercise. I believe Mr. Doak's methodology, as shown on Protestants' Ex. 9, is most faithful to the text of B.C.Z.R. §400.1. But it is certainly at odds with the four examples provided in Section 400.1.d of the Z.C.P.M., none of which seem to accurately track the language used in the Regulation. And County zoning officials must themselves find this issue confusing, since they were forced to revoke the permit upon discovering it was "inadvertently" issued. Pets. Ex. 10. In these circumstances I believe Baltimore County is equitably estopped from revoking the permit as it pertains to the location of the building on the lot. *Permanent Financial Corp. v. Montgomery County*, 308 Md. 239 (1986).

THEREFORE, IT IS ORDERED, this 31st day of **August, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit an existing detached accessory building (storage shed) with a height of 18 ft. in lieu of the maximum allowed 15 ft., be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance concerning the location on the lot of the existing accessory building be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time

is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

2. Petitioners or subsequent owners shall not convert the garage into a dwelling unit or apartment. The garage shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The garage 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.

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln