

<b>IN RE: PETITION FOR ADMIN. VARIANCE</b>	*	BEFORE THE
<b>(2241 Monocacy Road)</b>		
15 <sup>th</sup> Election District	*	OFFICE OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
William J. & Amy M. Nicely	*	HEARINGS FOR
Petitioners		
	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2018-0218-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County for consideration of a Petition for Administrative Variance filed by the legal owners of the property, William J. and Amy M. Nicely (“Petitioners”). The Petitioners are requesting Variance relief pursuant to §§ 400.1 and 400.3 of the Baltimore County Zoning Regulations (“BCZR”), to permit an accessory structure (pole barn) in the rear yard located in the third of the rear yard along Wicomico Road in lieu of being in the third of the yard farthest from all roads, and to have a height of 17 ft. in lieu of the maximum allowed 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.

The Zoning Advisory Committee (“ZAC”) comments were received and are made part of the record of this case. The property is located within the Chesapeake Bay Critical Area (“CBCA”) and is subject to Critical Area requirements as noted in the ZAC comment dated March 14, 2018 submitted by the Department of Environmental Protection and Sustainability (“DEPS”).

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on March 4, 2018, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have filed the supporting affidavits as required by § 32-3-303 of the Baltimore County Code (“BCC”). Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of § 307.1 of the BCZR. Furthermore, strict compliance with the BCZR would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Although the Department of Planning did not make any recommendations related to the proposed accessory structure’s (pole barn) height and usage, I will impose conditions that the pole barn shall not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or bathroom facilities, or used for commercial purposes.

Pursuant to the posting of the property and the provisions of both the BCC and the BCZR, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this **13<sup>th</sup>** day of **April, 2018**, 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 (“BCZR”), to permit an accessory structure (pole barn) in the rear yard located in the third of the rear yard along Wicomico Road in lieu of being in the third of the yard farthest from all roads, and to have a height of 17 ft. in lieu of the maximum allowed height of 15 ft., 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 proposed accessory structure (pole barn) into a dwelling unit or apartment. The proposed accessory structure (pole barn) shall not contain any sleeping quarters, living area, and kitchen or bathroom facilities.
3. The proposed accessory structure (pole barn) shall not be used for commercial purposes.
4. Petitioners must comply with the DEPS ZAC comment, dated March 14, 2018; a copy of which is attached hereto and made a part thereof.

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:dlw