

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(1027 Marshsane Road)</b>		
4th Election District	*	OFFICE OF ADMINISTRATIVE
4th Council District		
Brian M. Hamilton	*	HEARINGS FOR
Legal Owner		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2020-0203-A</b>

\* \* \* \* \*

**AMENDED  
OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by Brian M. Hamilton for property located at 1027 Marshane Road. The Petitioner is requesting variance relief from Baltimore County Zoning Regulations (“BCZR”) § 400.3 of the Baltimore County Zoning Regulations (“BCZR”) to permit an accessory structure (shed) with a height of 22 ft. (less than after grade) in lieu of the maximum 15 ft.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan 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. There were no adverse ZAC comments submitted by any of the County reviewing agencies.

Brian M. Hamilton appeared. Adam Rosenblatt, Esquire appeared and represented the Petitioner. The subject property is approximately 1.42 acres and is zoned RC 4. Mr. Rosenblatt explained that the lot is irregularly shaped, and has well and septic systems that limit where the subject accessory structure could be located. Further, there is a forest conservation easement covering a portion of the property. He further explained that the height variance is needed in order

to construct this custom structure, which is compatible with the scale and architecture of the principal residence and the surrounding residences. Finally, he noted that the homeowners association has approved the proposed structure, as has the one adjoining neighbor that had originally objected. *See*, Petitioner’s Exhibits 4 and 5. Mr. Hamilton explained that he obtained his neighbor’s consent by agreeing to plant numerous large trees to screen the structure from his neighbor’s view.

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).

As described above, the site is unique for a variety of reasons. The Petitioner will suffer practical difficulty and hardship if the variance relief is denied because he would be unable to build the proposed structure, which he needs for storage. I find that this modest height variance can be granted within the spirit and intent of the BCZR and without harming the public health, safety, or welfare.

THEREFORE, IT IS ORDERED, this 15th day of **December 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to § 400.3 of the Baltimore County Zoning Regulations (“BCZR”) to permit an accessory structure (shed) with a height of 22 ft. (less than after grade) in lieu of the maximum 15 ft. is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is 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, Petitioner would

be required to return the subject property to its original condition.

- Petitioner or subsequent owners shall not convert the accessory structure (detached garage) into a dwelling unit or apartment. The proposed accessory structure (detached garage) shall not contain any sleeping quarters, living area, and kitchen or bathroom facilities.
- The proposed accessory structure (detached 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.

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Signed  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/dlm