

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(17 Cliffholme Road)	*	OFFICE OF
3 rd Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
James C. Beattie, Jr.		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2019-0510-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of James C. Beattie, Jr., legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to permit an accessory structure (barn) to exist on the subject property prior to the final construction of the principal single family dwelling. In addition, a Petition for Variance was filed pursuant to BCZR §§ 400.1 and 400.3: (1) to permit an accessory structure (barn) to be located in the side yard in lieu of the required rear yard; and (2) to permit the height of an accessory structure (barn) of 25 ft. in lieu of the required 15 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

James C. Beattie, Jr. and Bruce Doak, surveyor appeared in support of the requests. Two adjacent property owners attended the hearing in opposition to the requested relief and were represented by Michael McCann, Esquire. A letter of opposition was also received from the Valleys Planning Council, although no one from that organization attended the hearing. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency did not oppose the request, subject to certain conditions.

This parcel is zoned RC 2. It is just over 5 acres. The petitioner testified that he began construction of this 80' x 36' barn on the property without a building permit because his wife was told by Wally Lippincott of the DOP that a permit was not needed for an agricultural building. After substantial construction was completed a complaint was filed with the Code Enforcement office and a citation was issued (Protestant's Exhibit 1). The citation is for failure to obtain a building permit for what is purportedly a residential accessory structure. Petitioner was therefore advised he would need to file for the relief described above.

Interior and exterior photos of the structure were admitted, collectively, as Petitioner's Exhibit 2. The photos depict a large, attractive barn style structure. The interior contains several horse stalls as well as open area and storage space. The petitioner testified that if and when the barn is completed it will house up to four horses, and may also house goats that will be raised for their wool, which is used in making cashmere. He explained that his mother owns Hunt Valley Cashmere, a retail fiber store. He testified that they envisioned starting with 16 goats but that they may ultimately have more. He explained that 64 goats is the most his mother has ever kept at one time. He further testified that his wife has stud horses that will be kept there. Finally, he testified that he and his wife intended to begin construction of their residence on the property in spring 2021. The site plan depicts the residence to the west of the barn structure.

Thomas Finnerty and Jeffrey Schlesinger testified in opposition. Their properties are immediately adjacent, and overlook this parcel from the ridge to the south. They are troubled by the visual impact of this large structure and also expressed concerns about the expected noise and odors associated with a barn. In addition they objected to recreational vehicles, such as four wheelers and/or dirt bikes being stored there. Their position is that this is not actually an agricultural building but is, rather, a residential accessory structure.

At the end of the hearing, at the suggestion of the undersigned, the parties agreed that they would attempt to reach an amicable resolution of the issues and I therefore held the case *sub curia*. I was later informed by Mr. McCann and Christopher Mudd, Esquire (who had been retained by petitioner post-hearing) that a resolution could not be reached. Counsel therefore requested that another hearing be scheduled so that they could present legal argument. This hearing was held on January 28, 2021.

Mr. Mudd argued that Mrs. Beattie had been accurately advised that they did not need a building permit since, under Part 112.1.1 “Agricultural Buildings” are exempt from the building permit process. He further urged that the code citation should not have been issued, and that Mr. Beattie should not have even been required to file the instant petition seeking special hearing and variance relief because the height and location restrictions associated with residential accessory structures are not applicable to agricultural buildings. Mr. Mudd noted that the BCZR does not define what qualifies as an “agricultural building,” but that BCZR § 101.1 defines “Farm” as “three acres or more of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, *or for residential and associated agricultural uses.*” (emphasis added). He further noted that “commercial agriculture” is defined in the BCZR, but that “agriculture” is not; and therefore, pursuant to the preamble to BCZR § 101.1, reference must be made to Webster’s Third New International Dictionary. There “agriculture” is broadly defined as “1 a: the science or art of cultivating the soil, harvesting crops, and raising livestock : HUSBANDRY, FARMING, b: the science or art of the production of plants or animals useful to man and to varying degrees the preparation of these products for man’s use and their disposal (as by marketing).” Mr. Mudd argued that under this definition the structure in question should be

acknowledged as an “agricultural building” under the county Building Code, and therefore exempt from the building permit process, and from the height and siting restrictions of the BCZR.

Mr. McCann countered by arguing that in order to qualify as an agricultural building that agriculture must be the primary use, and that here the petitioner’s primary use is residential. He argued that Mr. Beattie had only described future plans for any commercial agricultural uses – such as goat husbandry- but that currently, and certainly at the time of the first hearing, there were no such activities being conducted on the parcel. Mr. McCann noted that the BCZR contains only one definition for agriculture, and that definition applies only to *commercial* agriculture.

BCZR § 101.1 provides as follows:

AGRICULTURE, COMMERCIAL — The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to § 8-209 of the Tax-Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, dairying, pasturage agriculture, horticulture, floriculture, aquiculture, apiculture, viticulture, forestry, animal and poultry husbandry, the operation of an equestrian center, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations.

Mr. McCann pointed out that the SDAT printout for this property (Protestant’s Exhibit 9) indicates that the principal use of the property is residential. He argued that it would be contrary to the spirit and intent of the BCZR to treat structures like this – which are actually accessory residential structures – as agricultural buildings exempt from the height and area restrictions. He further argued that the petitioner is not entitled to variance relief because the property is not sufficiently unique, and more importantly, the need for these variances is self-inflicted, and therefore variance relief is barred. On this point he cited *Ad + Soil, Inc. v. Cty. Comm'rs of Queen Anne's County*, 307 Md. 307, 340 (1986).

This is a difficult case and both sides made cogent and forceful presentations. In my view the Beatties' intended use of this property is sufficiently agricultural to warrant a building permit exemption under Part 112.1.1 of the Building Code. It is therefore also not subject to the otherwise applicable height and area restrictions. It is true that the property is currently designated residential by the SDAT. As noted above, under BCZR § 101.1, commercial agricultural is defined, in pertinent part, as follows: "to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to § 8-209 of the Tax-Property Article of the Annotated Code of Maryland." The unrebutted testimony in this case is that the Beatties intend to have stud horses and raise goats on the property for income. I understand that they were not yet doing so at the time they built the barn in question. However, that sets up a "Catch 22" situation because they need the barn in order to facilitate these agricultural activities. Further, the BCZR definition of commercial agriculture does not require that the property be currently assessed by the SDAT as agricultural, it merely states that it must *qualify* for that tax status. And Section 8-209 (g) (2) of the Tax Property article provides that a property under 20 acres can qualify as an active agricultural use if it generates a minimum of \$2,500.00 a year in gross income. Based on Mr. Beattie's testimony I think it is reasonable to believe that the goat husbandry will generate this paltry amount of gross income.

Further, as Mr. Mudd pointed out, just because commercial agriculture is the only kind of agriculture defined in the BCZR is not necessarily dispositive. And the Webster's definition is broad enough to include non-commercial agricultural activities. Moreover, as noted above, BCZR § 101.1 defines a farm as "three or more acres of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, *or for residential and associated agricultural uses.*" This definition squarely fits the activities described by Mr. Beattie.

Therefore, the barn structure that they have constructed to support these activities is, in my view, an agricultural building.

Permanent Fin. Corp. v. Montgomery County, 308 Md. 239, 251 (1986) (where county zoning regulations were reasonably capable of differing interpretations the county was estopped from enforcing strict interpretation that would have required tearing building addition down after builder had relied on different interpretation conveyed to him by county official). Here, Mr. Beattie's testimony was that his wife had described their intended plans for the property to Wally Lippincott of the DOP and that based on her description he had advised her that this barn would qualify as an agricultural building that would not require a permit and would not be subject to height and area restrictions. Protestants did not summon Mr. Lippincott to the hearing to dispute that testimony. Therefore, under all the circumstances, I find that this is the rare case where estoppel can and should be invoked against the county. *See, contra, Marzullo v. Kahl*, 366 Md. 158 (2001) (building permit allowing construction of a structure to house exotic reptiles such as boa constrictors and pythons was clearly not a permitted agricultural use under the BCZR and therefore the permit was issued unlawfully and permittee could be required to disassemble structure).

In conclusion, I find that the structure in question is an agricultural building. It is therefore entitled to the building permit exemption under Part 112.1.1. It is also entitled to the height exception under

I understand the Valleys Planning Council's concerns about large residential accessory buildings being constructed in the RC zones under the pretense that they are, in fact, agricultural buildings. That of course should not be permitted. However, every case must be judged on its own facts and I am satisfied that the barn structure in this case is indeed an agricultural building, even

though it will incidentally also serve to benefit the residence on the property, as is the case for many farms.

THEREFORE, IT IS ORDERED this **16th** day of **February, 2021**, by this Administrative Law Judge, that the Petition for Special Hearing to permit an accessory structure (barn) to exist on the subject property prior to the final construction of the principal single family dwelling, be and is hereby DISMISSED, as MOOT.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an accessory structure (barn) to be located in the side yard in lieu of the required rear yard; and (2) to permit the height of an accessory structure (barn) of 25 ft. in lieu of the required 15 ft., be and is hereby DISMISSED as MOOT.

IT IS FURTHER ORDERED that the barn structure shall not be used for residential or commercial purposes other than agricultural commercial purposes; shall not have kitchen facilities; and shall not have separate utility meters.

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

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

PMM:dlm