

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(12402 Jerusalem Road)	*	OFFICE OF
11 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
Mark A. Kukucka		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2020-0125-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 Mark A. Kukucka, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”), to permit an accessory building (pole barn) that is larger in area (building footprint) than the principal dwelling area (building footprint). In addition, a Petition for Variance was filed pursuant to §§ 400.1 and 400.3, of the BCZR to permit an accessory building (pole barn) that will be 27 ft. in height in lieu of the required 15 ft. maximum height and to permit an accessory building (pole barn) with a side setback of 6 in. (1/2 ft.) in lieu of the minimum required 30 in. (2 1/2 ft.).

Due to 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.

Mark Kukucka appeared in support of the requests. Sally Wagner, a neighbor, also attended and opposed the requests on the grounds that she had to comply with the BCZR when she built a structure on her property. A Zoning Advisory Committee (“ZAC”) comment was

received from the Department of Planning (“DOP”). The agency did not oppose the requested relief but requested certain conditions which will be incorporated into this Order.

The property is approximately 5.746 acres and is zoned RC 5. Mr. Kukucka testified that his family has owned the property since 1966, and that he inherited it from his father in 2006. He testified that he also owns the adjoining property at 12400 Jerusalem Road, which is 6.24 acres. The proposed pole barn abuts the 12400 property. As noted by the DOP, and as depicted on the site plan, the barn will sit almost 600 feet off of Jerusalem Road and almost 300 feet from the adjoining property to the east. Further, there is substantial mature tree cover on much of the property. Mr. Kukucka testified that there are old decrepit barns on both of his properties that he intends to raze once this proposed pole barn is completed. He needs the barns to house his four tractors and to provide temporary storm shelter for 12 of his neighbor’s farm animals, which he allows to graze on his property. He also will use it to store fruit from his orchards on the property and for Shasta and Paulownia seeds that he raises and harvests there.

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 depicted on the site plan, the property is long and narrow, and as the Petitioner explained, he also owns the property immediately adjacent to the proposed barn. The property is therefore unique. The petitioner will experience practical difficulty and hardship if the variance relief is denied because he would be unable to erect the barn on this site, and would be unable to construct a barn large enough to meet his agricultural needs. I find that the variance and special

hearing relief to allow a barn larger than the residence can both be granted within the spirit and intent of the BCZR and without harming the public health, safety or welfare.

THEREFORE, IT IS ORDERED this 2nd day of **November, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the BCZR, to permit an accessory building (pole barn) that is larger in area (building footprint) than the principal dwelling area (building footprint) be and hereby is GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to § § 4001. 1 and 400.3 of the BCZR to permit an accessory building (pole barn) that will be 27 ft. in height in lieu of the required 15 ft. maximum height and to permit an accessory building (pole barn) with a side setback of 6 in. (1/2 ft.) in lieu of the minimum required 30 in. (2 1/2 ft.). be and 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 his 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.
- The pole barn shall not be used for residential or commercial purposes and shall not have a separate utility meter.

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