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| **IN RE: PETITION FOR ADMIN. VARIANCE** | * | BEFORE THE |
| **(5308 Glen Arm Road)** | | |
| 11th Election District | * | OFFICE OF ADMINISTRATIVE |
| 3rd Council District | | |
| Charles Otter | * | HEARINGS FOR |
| Petitioner | * | BALTIMORE COUNTY |
| | * | **CASE NO. 2022-0173-A** |

* * * * * * * * *

**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 Petitioner Charles Otter, ("Petitioner") for the property located at 5308 Glen Arm Road, Glen Arm, Maryland (the "Property"). The Petitioner is requesting Variance relief pursuant to the Baltimore County Zoning Regulations ("BCZR"), §400.1: To permit an accessory structure (pole barn) to be erected in front and side yard in lieu of the required rear yard placement.

First, Charles Otter signed the Petition as the legal owner of the Property, and the name Marlene Ann Otter as legal owner was crossed out. Upon review of the SDAT information and Deed for the Property, Marlene Ann Otter is indeed the sole surviving owner of the Property pursuant to a Life Estate Deed, with full powers, as recorded in Land Records of Baltimore County on November 23, 2015 (L, 36885, p 196). The Office of Zoning Review ("OZR") provided a written comment that the Property was "gifted" by Marlene Ann Otter and Charles Louis Otter to the Petitioner which is not legally correct given the Life Estate Deed with full powers. Accordingly, Petitioner has no legal right to the Property at the present time and the Petition is defective on its face.

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Second, on about September 20, 2022, Marlene Otter submitted a notarized Affidavit to OAH in which she acknowledged that she owns the Property, that her husband Charles Louis Otter passed away in 2021, that her son, the Petitioner, has resided in the home since 1991, and that he will inherit the Property upon her passing pursuant to the Life Estate Deed. Mrs. Otter did not confirm that she resides at the Property and therefore an Administrative Variance could not be filed.

In the Affidavit, and in the Petition as filed, a second pole barn measuring 720 sf is being requested on a very small parcel which measures a total of 0.353 ac +/- (15,365 sf). (Pet. Ex. 1). The existing 814 sf, 1½ story home is part of a duplex dwelling constructed in 1900 and is addressed as 5306 Glen Arm Rd., and 5308 Glen Arm Rd. The Property does not have a back yard; only an elongated side yard to the east. According to the Site Plan the existing pole barn/2 car garage is 774 sf, nearly as big as the home. Petitioner did not submit any photographs of the Property.

Petitioner asserts in the Petition that he desires second pole barn to store "materials and equipment" that he uses "to work on old tractors and other equipment." Petitioner acknowledges that without the Variance relief, he "would have to rent space incurring additional expenses." The Property is zoned Rural Residential (RC5) which does not permit either by right, or by Special Exception, the use of RC5 property as an equipment repair facility, automotive service facility, contractor's equipment storage yard, or the like, *even if* working on "tractors and other equipment" is only for personal reasons, and not for business or commercial purposes. If for the later, such a commercial use would be a violation of BCZR.

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

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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).

Although the Petition is defective as discussed above, the requested Variance must still be denied on its merits. Based on the elongated shape of the Property as shown on the Site Plan, I find that the Property is unique. However, the Property is already improved with a 774 sf pole barn in the side yard. Given the small size of the Property, I find that it is not within the spirit or intent of the RC5 zone to permit 2 accessory buildings totaling 1,494 sf (680 sf more than the size of the home), of which each separately are nearly as large as the 814 sf home. BCZR, §101.1 defines an "accessory structure" as "is subordinate in area, extent or purpose to the principal use or structure."

I also find that a second pole barn is for convenience only. By denying the Variance request, Ms. Otter, as the legal owner, will not suffer any practical difficulty or unnecessary hardship, in that she will not be deprived of the reasonable use of her land. In *Chesley v. Annapolis*, 933 A.2d 475, 176 Md. App. 413 (Md. App. 2007), the Court of Special Appeals relied on the Court of Appeals holding in *Belvoir Farms Homeowners Ass'n. Inc. v. North*, 355 Md. 259, 276, 734 A.2d 227 (1999), wherein the Court recognized that the purpose of zoning restrictions is "to prevent exceptions as far as possible," so that the specific need for the variance "must be substantial and urgent and not merely for the convenience of the applicant[.]" (citing *Carney v. City of Baltimore*, 201 Md. 130, 137, 93 A.2d 74 (1952)). The *Chelsey* Court emphasized the Court of Appeals' holding in *Belvoir Farms* in stating that: "it generally is not a hardship to be without a desired convenience or amenity on one's property, because zoning restrictions are to be enforced in the absence of a "substantial and urgent" need for a variance."

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*Id.* At 933 A.2d 488. (See *Belvoir Farms Homeowners Ass'n*, 355 Md. at 261, 734 A.2d 227). The *Chelsey* Court stated: "the fact that a particular improvement would enhance the owner's enjoyment of the property did not establish that it would be a hardship to continue using the property without the variance." *Id.* At 933 A.2d 488-489. See, e.g., *Citrano v. North*, 123 Md. App. 234, 717 A.2d 960 (1998) (fact that proposed deck created a "pleasant amenity" did not create hardship); *North v. St. Mary's County*, 99 Md. App. 502, 519, 638. A.2d 1175 (owner's desire to build gazebo to read and view creek is not evidence of hardship), *cert. denied sub nom. Enoch v. North*, 336 Md. 224, 647 A.2d 444 (1994).

For the above reasons, the requested Variance will be denied.

THEREFORE, IT IS ORDERED, this **26th** day of **September, 2022**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Baltimore County Zoning Regulations ("BCZR"), §400.1: To permit an accessory structure (pole barn) to be erected in front and side yard in lieu of the required rear yard placement, in accordance with the Site Plan (Pet. Ex. 1), be, and it is hereby **DENIED**.

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

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge for
Baltimore County

MEM:dlw

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By D. Mignon

JOHN A. OLSZEWSKI, JR.
County Executive

PAUL M. MAYHEW
Managing Administrative Law Judge
MAUREEN E. MURPHY
Administrative Law Judge

September 26, 2022

Charles Otter - daviddagati@gmail.com
5308 Glen Arm Road
Glen Arm, MD 21057

RE: Petition for Administrative Variance
Case No. 2022-0173-A
Property: 5308 Glen Arm Road

Dear Mr. Otter:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

Maureen E. Murphy

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlw
Enclosure

## Donna Mignon

**From:** Administrative Hearings
**Sent:** Monday, September 26, 2022 3:35 PM
**To:** 'daviddagati@gmail.com'
**Cc:** Debra Wiley; County Council (countycouncil@baltimorecountymd.gov); Henry Ayakwah; Jeffery Livingston (jlivingston@baltimorecountymd.gov); Jenifer G. Nugent; PAI; Peoples Counsel; Peter Max Zimmerman (pzimmerman@baltimorecountymd.gov); Rebecca Wheatley (rwheatley@baltimorecountymd.gov); Vishnubhai K Desai (vdesai@baltimorecountymd.gov)
**Subject:** Case No: 2022-0173-A 5308 Glen Arm Road
**Attachments:** 2022-0173-A.pdf

Good Afternoon,

Please find attached ALJ Murphy's Opinion and Order in reference to the above matter.

Have a great and safe day.

Baltimore County Office of Administrative Hearings
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204
410-887-3868