

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(2008 Norhurst Way) *	OFFICE OF
1 <sup>st</sup> Election District	
1 <sup>st</sup> Council District *	ADMINISTRATIVE HEARINGS
Mark & Kathleen Schatz	
<i>Legal Owners</i> *	FOR BALTIMORE COUNTY
Petitioners *	<b>Case No. 2015-0054-SPHA</b>
* * * * *	

**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 the legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow an accessory apartment addition attached to the existing dwelling, and for a use permit. In addition, a Petition for Variance seeks the following: (1) to allow an accessory apartment that is 50% of the overall floor area in lieu of the maximum 1/3 or 2000 sq. ft. whichever is less, and; (2) to allow a rear yard of 20 ft. in lieu of the minimum requirement of 30 ft.

The subject property and requested relief is more fully depicted on the site plan that was marked as Petitioners’ Exhibit 1. Mark and Kathleen Schatz appeared in support of the requests. A neighbor attended the hearing to obtain further information, and he indicated that he had no objection to the petition. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) dated October 14, 2014.

The subject property is approximately 9,000 square feet and is zoned DR 5.5. The property is improved with a single family dwelling constructed in 1953. Tax records indicate the dwelling is approximately 1,500 sq. ft. Petitioners propose to construct an addition to their home, which would be approximately 1,480 sq. ft., to be used as an accessory apartment by Mr.

Schatz's parents. The Petitioners also own a second lot (shown on the Plan as Parcel #2) of approximately 6,675 sq. ft., which adjoins the subject property at the rear (i.e., northern) property boundary. Thus, even though Petitioners seek variance relief for a 20' rear yard (in lieu of the required 30'), this is in fact an "interior" lot line since Petitioners own both parcels which straddle the common boundary.

Based upon the testimony and evidence presented, I will grant the petition for variance.

To obtain variance relief a petitioner must show:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioners have met this test. The Petitioners must contend with existing site conditions, and the property is therefore unique. The Petitioners would experience a practical difficulty if the regulations were strictly interpreted, since they would not be able to construct the apartment for use by their elderly parents. Finally, the relief will not be injurious to the public welfare, as demonstrated by the lack of county and/or community opposition.

With regard to the petition for special hearing, the Petitioners have filed with the Department of Permits, Approval and Inspections (PAI) a declaration setting forth the legal restrictions which apply to accessory apartments. Specifically, Petitioners understand this is not a second dwelling on the property, but is an accessory use allowed only for so long as the space is occupied by those related to Petitioners by blood, marriage and adoption. The pictures admitted show this is an attractive and well maintained property, and both of the adjoining neighbors (at 2006 and 2010 Norhurst Way) informed Petitioners they had no objection to the requests. In these circumstances, I do not believe the use would be injurious to the public welfare, and I find the proposal conforms to B.C.Z.R. §502.1.

While the DOP did not object to the accessory apartment use or its size, it did note some concern with the 20' rear yard variance request, and felt the addition could be reconfigured to satisfy the 30' requirement in the B.C.Z.R. Petitioners indicated they explored that option, but advised that the architect felt the current design was most suitable for the site. In addition--and perhaps this was not known to the reviewer--Petitioners own an unimproved parcel which adjoins their rear yard, and thus the reduced rear yard setback will not impact an adjoining homeowner.

THEREFORE, IT IS ORDERED this 3<sup>rd</sup> day of November, 2014, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to allow an accessory apartment addition attached to the existing dwelling, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking the following: (1) to allow an accessory apartment that is 50% of the overall floor area in lieu of the maximum 1/3 or 2000 sq. ft., whichever is less, and; (2) to allow a rear yard of 20 ft. in lieu of the minimum requirement of 30 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners must obtain from PAI a use permit for the accessory apartment and must renew such permit every two (2) years.

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

\_\_\_\_\_  
Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge

JEB/sln

for Baltimore County