

IN RE: PETITION FOR VARIANCE
(6401 Brinton Road)
11th Election District
3rd Council District
Donald L. & Shirley L. Snyder
Petitioners

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2015-0094-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of the legal owners of the subject property. The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §400.4.A.1.a, to allow a 1,305 square foot accessory apartment in lieu of the permitted 1,011 square feet. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Donald & Shirley Snyder and David Billingsley, whose firm prepared the site plan, appeared in support of the requests. There were no interested citizens in attendance at the hearing, although Peter Zimmerman, People’s Counsel, appeared to express certain concerns with the procedures governing accessory apartment cases. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency opined that the use would not be detrimental to the community.

The subject property is approximately 5.38 acres and is zoned R.C. 2 and R.C. 5. Petitioners have lived at the property for nearly 50 years and would like to “age in place” rather than relocate to a senior community. Petitioners propose to construct an addition to the existing

single-family dwelling to be used as an accessory apartment. Normally, a public hearing is not required for an accessory apartment located within an existing single-family dwelling. But in this case the Petitioners request a larger (accessory apartment) addition than is permitted by the B.C.Z.R., hence the petition for variance.

Mr. Zimmerman suggested that in cases of this nature, a petitioner should be required to also file a petition for special hearing, which would enable the ALJ to not only grant a requested variance, but also grant the application for a use permit that would otherwise be approved by the Director of the Department of Permits, Approvals and Inspections (PAI). This argument has merit, and would allow such cases to be resolved in their entirety by the OAH, rather than in a piecemeal fashion (i.e., variance relief granted by the OAH, followed by use permit approval by the Department of PAI).

The Regulations, however, set forth different procedures and requirements for accessory apartments depending on whether they are within an existing dwelling or located in an accessory structure on the same lot as an owner-occupied dwelling. In the former scenario, the Director of PAI can issue the permit upon a finding that the use will not “negatively affect the health, safety or general welfare of the surrounding community,” while in the latter scenario the ALJ can grant the request only upon a finding that the petitioner has satisfied the special exception standards set forth in B.C.Z.R. §502.1. In my opinion, the requirements are more stringent when the accessory apartment is located in a detached structure, because the danger is greater that it could be “converted to a second dwelling beyond the scope” of the regulation, as referenced in B.C.Z.R. §400.4.B.3.

As such, I do not believe a petition for special hearing should be required or filed in a variance case involving an accessory apartment within an existing single-family dwelling. It is

the Director, not the ALJ, who approves such a use; any policy or procedure to the contrary would be at odds with the applicable zoning regulation. I recognize, as Mr. Zimmerman pointed out, that the Zoning Office has in some instances required a petition for special hearing to be filed in such scenarios, and if such cases arise in the future the petition will be considered, but any order granting relief will also provide that the petitioner must obtain from the Director of PAI a use permit for the accessory apartment.

To obtain variance relief requires a showing that:

- (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 large parcel is mostly wooded and is bisected by a stream. As such, the property is unique. If the B.C.Z.R. were strictly interpreted Petitioners would suffer a practical difficulty, given they would be unable to construct the proposed accessory apartment which, as noted by Petitioners, is no larger than the size of such living units at nearby senior communities. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of County and/or community opposition.

THEREFORE, IT IS ORDERED, this 4th day of December, 2014, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("B.C.Z.R.") §400.4.A.1.a, to allow a 1,305 square foot accessory apartment in lieu of the permitted 1,011 square feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- 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.
- Petitioners must obtain from the Department of PAI a use permit for the accessory apartment, which permit must be renewed every two years and is subject to the restrictions set forth in B.C.Z.R. §400.4
- Petitioners must within 30 days of the date of this Order file among the Baltimore County land records the Declaration (Petitioners' Exhibit 7) submitted at the public hearing.

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

JEB:sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County