

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(7820 Westmoreland Avenue) *	OFFICE OF
9 <sup>th</sup> Election District	
6 <sup>th</sup> Council District *	ADMINISTRATIVE HEARINGS
Carmen Prato, <i>Owner</i>	
Petitioner *	FOR BALTIMORE COUNTY
	<b>Case No. 2016-0080-SPHA</b>

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**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 Carmen Prato, legal owner (“Petitioner”). The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve a garage with a footprint greater than the principal dwelling. In addition, a Petition for Variance seeks to permit a garage with a height of 17 ft. in lieu of the permitted 15 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Carmen Prato. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. No substantive Zoning Advisory Committee (ZAC) comments were received. There were no protestants or interested citizens in attendance.

The subject property is .251 acres and zoned D.R. 5.5. The property is improved with a modest single family dwelling constructed in 1951. Petitioner purchased the property recently, and would like to construct a garage in the rear yard to provide storage for his cars, all-terrain vehicles and other household and family items. The proposed garage would be 30' x 35', or 1,050 sq. ft., which is only slightly larger than the single family dwelling. As such, the petition for special hearing will be granted.

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).

Petitioner has met this test. The property has irregular dimensions (i.e., narrow and very deep), and is therefore unique. If the B.C.Z.R. were strictly interpreted, Petitioner would experience a practical difficulty, given he would be unable to construct the proposed garage. 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 18<sup>th</sup> day of November, 2015, 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 approve a garage with a footprint greater than the principal dwelling, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a garage with a height of 17 ft. in lieu of the permitted 15 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. 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.

2. The Petitioner or subsequent owners shall not convert the subject garage into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The garage shall not be used for commercial purposes.

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

JEB/sln

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County