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| IN RE: PETITIONS FOR SPECIAL HEARING * | BEFORE THE |
| AND VARIANCE | |
| (5402 Patterson Road) * | OFFICE OF |
| 11 th Election District | |
| 3 rd Council District * | ADMINISTRATIVE HEARINGS |
| Richard George D’Antonio & | |
| Kathleen Kohlerman D’Antonio * | FOR BALTIMORE COUNTY |
| <i>Owners/Petitioners</i> | |
| * | Case No. 2017-0028-SPHA |

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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 Richard and Kathleen D’Antonio, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to approve an accessory apartment with a square footage in excess of the permitted 1,200 sq. ft. In addition, a Petition for Variance seeks approval of the 1,255 sq. ft. apartment as constructed in lieu of the maximum allowed 1,200 sq. ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests were Richard and Kathleen D’Antonio. There were no Protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Department of Environmental Protection and Sustainability (DEPS). Neither agency opposed the requests.

The subject property is approximately 1.75 acres in size and is zoned RC-2. The property is improved with a single-family dwelling and detached garage. Petitioners constructed last year an addition to the garage to be used as a hobby room. Since that time their daughter and her

family have suffered a financial setback and have moved back home. Petitioners propose to convert the hobby room into an accessory apartment pursuant to B.C.Z.R. § 400.4. Since the apartment would be located in a detached structure, the B.C.Z.R. requires a public hearing.

The owners submitted an aerial photo of the subject property and the immediate vicinity. Ex. 2. The property is situated in a rural area which is sparsely populated. There are significant buffers between this property and neighboring homes, and I do not believe the accessory apartment use would have a detrimental impact upon the community. As such the petition for special hearing will be granted.

VARIANCE

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).

Petitioners have met this test. The large property has an irregular shape and is therefore unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be required to raze and/or reconstruct the existing accessory building. Finally, as demonstrated by the lack of any opposition, I do not believe granting the requests would have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this 28th day of September, **2016**, 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 an accessory apartment within a detached accessory building on the subject property, be and is hereby GRANTED.

IT IS FURTHER ORDERED the petition for variance to approve the 1,255 sq. ft. accessory apartment in lieu of the maximum allowed 1,200 sq. ft., be and is hereby GRANTED.

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

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must obtain approval from the Ground Water Management section of DEPS prior to issuance of permit(s) for the project.
3. Petitioners must obtain from the Department of Permits, Approvals and Inspections a use permit for the accessory apartment.

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