

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(5607 Ranelagh Road)	*	OFFICE OF
11 <sup>th</sup> Election District		
6 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
Kenneth K. & Whitney E. Klein		
<i>Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners		
	*	<b>Case No. 2017-0031-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 Kenneth K. & Whitney E. Klein, legal owners (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to approve a use permit for an accessory (in-law) apartment to be located partially within the existing single family dwelling and partially within a proposed dwelling addition. In addition, a Petition for Variance seeks to permit a proposed dwelling addition with a rear yard setback of 23 ft. in lieu of the minimum required 40 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 Kenneth & Whitney Klein and Richard Matthews. There were no Protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. No substantive Zoning Advisory Committee (ZAC) comments were received.

The subject property is approximately .90 acres in size and is zoned DR-2. The property is improved with a single-family dwelling and a garage, which is connected to the dwelling by a breezeway.

## SPECIAL HEARING

As discussed at the hearing, I do not believe special hearing relief is required, because the accessory apartment will be located within the principal dwelling, not a detached or freestanding accessory building or structure. B.C. Z. R. §400.4. Even so, I will grant the special hearing as requested based on the site plan, testimony and exhibits in the file.

## VARIANCES

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 property has an irregular shape and is therefore unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be unable to construct the proposed addition to the dwelling. Finally, as demonstrated by the lack of any opposition, I do not believe granting the requests would have a detrimental impact upon the community.

At the hearing Petitioners indicated County zoning staff suggested they also seek a variance for their garage, which was constructed several years ago and was in its current location when they purchased the property this year. As noted earlier, the garage is connected to the dwelling with a breezeway, most likely to legitimize its front yard location. In any event, the garage is situated 12 ft. from the side yard property boundary, which triggers the need for a

variance for the deficient setback. The petition was amended at the hearing to include this additional variance request.

THEREFORE, IT IS ORDERED this 29<sup>th</sup> 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 a use permit for an accessory (in-law) apartment to be located partially within the existing single-family dwelling and partially within a proposed dwelling addition, be and is hereby GRANTED.

IT IS FURTHER ORDERED the petition for variance to permit a proposed dwelling addition with a rear yard setback of 23 ft. in lieu of the minimum required 40 ft. and an individual side yard setback of 12 ft. in lieu of the minimum required 25 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.

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