

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(2414 Stockton Road)	*	OFFICE OF
10 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Andrew & Lindsay Nixon		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2017-0202-SPHA

* * * * *

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 Andrew and Lindsay Nixon, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit an attached accessory apartment to be built and used as an in-law suite. In addition, a Petition for Variance seeks to permit a proposed addition with a rear yard setback of 20 ft. in lieu of the required 35 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Andrew and Lindsay Nixon appeared in support of the requests. 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 Environmental Protection and Sustainability (DEPS) and the Department of Planning (DOP). Neither agency opposed the requests.

The subject property is approximately 5.519 acres in size and is zoned RC-2. The property is improved with a large single family dwelling, and the property is adjacent to a large, active farming operation. Petitioners propose to raze and rebuild the existing attached garage and construct a 1,258

sq. ft. addition to the north and east side of the rebuilt garage. The addition will be used as an accessory apartment for Edwin and Allyson Pipher, parents of the Petitioners.

SPECIAL HEARING

A special hearing is usually not required when an owner proposes an accessory apartment which would be located in an existing dwelling. B.C.Z.R. § 400.4. In this case, Petitioners will construct an addition to the existing single family dwelling, and that addition will contain the accessory apartment. In these circumstances the Office of Zoning Review believed a special hearing was necessary. The subject property is over 5 ½ acres in size and is located in a rural, sparsely populated area of the county. As such, the accessory apartment use – subject to the Declaration of Understanding which must be filed in the land records – will not have a detrimental impact upon the community.

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 (19915).

Petitioners have met this test. The rural property has irregular dimensions 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. Finally, as demonstrated by the lack of County and/or community opposition, I do not believe granting the requests would have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this 9th day of **May, 2017**, 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 permit an attached accessory apartment to be built and used as an in-law suite, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance to permit a proposed addition with a rear yard setback of 20 ft. in lieu of the required 35 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. Prior to issuance of permits, Petitioners must obtain approval from the Ground Water Management section of DEPS.
3. Petitioners must provide a landscape buffer (satisfactory to the DOP) to screen the accessory apartment from the adjacent farm.
4. Any dwelling may be subject to inconveniences or discomforts arising from agricultural operations, including but not limited to noise, odors, fumes, dust, the operations of machinery of any kind during any 24 hour period (including aircraft), the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. The County shall not consider an agricultural operation to be a public or private nuisance if the operation complies with these regulations and all federal, state and county health and environmental requirements.

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
for Baltimore County

JEB:dlw