

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(21239 Mikules Manor Road)	*	OFFICE OF
6 <sup>th</sup> Election District		
3 <sup>rd</sup> Council District	*	ADMINISTRATIVE HEARINGS
James & Patricia O'Donnell		
<i>Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners		
	*	<b>Case No. 2017-0214-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 James and Patricia O'Donnell, legal owners ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R") to approve a use permit and an accessory apartment in a separate accessory building on the subject single-family residential property containing 14.74 acres of land. In addition, a Petition for Variance seeks to allow a height of 22 ft. in lieu of the permitted 15 ft. for an accessory building. A site plan was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing in support of the requests was James O'Donnell. Timothy M. Kotroco, Esq. represented Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not object to the requests, and its comment will be discussed in greater detail below.

**SPECIAL HEARING**

The subject property is approximately 15 acres in size and is split-zoned RC-8 and RC-2. The property is improved with a single-family dwelling and several accessory buildings used for

horses and a dog kennel, which was approved in Case No. 1987-0085-XA. In addition, there is an existing two-story accessory structure on the property which Petitioners propose to use as an accessory apartment for their grandson. The DOP requested confirmation the structure is less than 1,200 square feet, and Petitioners submitted floor plan drawings indicating the apartment is 960 square feet (24' x 20', or 480 sq. ft. per floor). In response to the DOP's second concern, Petitioners submitted at the hearing a Declaration of Understanding containing all of the requirements set forth in Section 400.4 of the Regulations.

The DOP opined Petitioners satisfied the requirements set forth in B.C.Z.R. §502.1, and I concur. This large site is in a rural setting with mature trees and vegetation. The accessory apartment is modest in size and is intended for an appropriate purpose; i.e., to house the owners or "immediate family members," as permitted by B.C.Z.R. §400.4. For these reasons I do not believe the accessory apartment use will have a detrimental impact upon the community, and the special hearing request 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 irregular dimensions and is therefore unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be required to raze or rebuild the accessory building. Finally, as demonstrated by the

lack of County and/or community opposition, I do not believe granting the request would have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this 24<sup>th</sup> day of March, 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 approve a use permit and an accessory apartment in a separate accessory building on the subject single-family residential property containing 14.74 acres of land, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance to allow a height of 22 ft. in lieu of the permitted 15 ft. for an accessory building, 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 its 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. The accessory apartment shall not be served by a separate utility meter.
3. The accessory apartment use shall be subject to the restrictions set forth in the Declaration of Understanding, which must be filed among the land records of Baltimore County.

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