

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(1922 Stockton Road)	*	OFFICE OF
10 <sup>th</sup> Election District		
3 <sup>rd</sup> Council District	*	ADMINISTRATIVE HEARINGS
Edward & Lisa Etchison		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	<b>Case No. 2017-0237-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 Edward & Lisa Etchison, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) to allow the continued use of a second single family dwelling on the subject property that has been used by family every day and non-conforming since 1974; and (2) to approve an accessory structure that is larger than the principal structure/dwelling. In addition, a Petition for Variance seeks: (1) to permit a garage to be located in the front yard of a dwelling in lieu of the rear yard; and (2) to permit a garage with a maximum height of 18 ft. in lieu of the required 15 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Edward & Lisa Etchison and surveyor Bruce Doak 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 Planning (DOP) and the Department of Environmental Protection and Sustainability (DEPS). Neither agency opposed the requests.

The subject property is approximately 4.619 acres in size and is zoned RC-2. The property has been owned for over 50 years by Petitioners’ family. The original single-family dwelling on the

property is 100 +/- years old, and is occupied by Petitioners. In 1974 Petitioners' father built on the property a second dwelling for use by his aging parents. Petitioners were unable to locate permits for the second dwelling, although DEPS apparently has records and reports related to the well and septic serving this home. The home has a separate address (i.e., 1924 Stockton Road) and BGE account, although it is located on the same lot as the principal dwelling. When Petitioners' grandparents died in the early 1980's, family friends (who are now in their 80s) moved into the smaller home, and they still reside in the dwelling.

### SPECIAL HEARING

The first special hearing request concerns a detached garage Petitioners propose to construct on the property. Petitioners explained the garage would be for storage of lawn equipment and household items. Based on the plan it appears the ground floor area (i.e., "footprint") of the garage would be roughly the same size as the smaller house, and the zoning office instructed Petitioners to seek special hearing relief for this condition. The proposed garage will be located more than 30 feet from the nearest property line and will be only partially visible from one neighbor's home. As such the request will be granted.

The other special hearing request concerns the status of the second dwelling. It seems unlikely it would qualify as a lawful nonconforming building. Mr. Doak indicated the property was zoned RDP in 1974 when the home was constructed, and that the RDP zone had a one acre minimum lot size. Mr. Doak also noted that unlike other provisions in the B.C.Z.R., the RDP regulations did not explicitly state that only one dwelling may be constructed per lot. Even so, there was a subdivision process in Baltimore County in the 1970s, and it is undisputed this property has never been subdivided. That, in my mind, calls into question whether this would be a "lawful" nonconforming building.

But I believe the structure is in essence an accessory apartment, although Petitioners should not be required to comply with B.C.Z.R. §400.4. in its entirety since the use predated that regulation by nearly forty years. Accessory apartments are permitted in an accessory building located on the same lot as the owner-occupied principal dwelling. The one-story dwelling in question is approximately 30' x 36', so the structure is within the 1,200 sq. ft. limitation set forth in B.C.Z.R. §400.4. And though the family friends currently living in the apartment are not technically "immediate family members," Petitioners indicated they were amenable to such a restriction for all future occupants.

### 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 site has irregular dimensions and topographical features across the property. As such it is unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be unable to construct the proposed garage. 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 28<sup>th</sup> day of **April, 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"): (1) to allow the continued use of a second single-family dwelling on the subject property, subject to the restrictions noted below; and (2) to approve an accessory structure (garage) that is larger than the principal structure/dwelling, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance: (1) to permit a garage to be located in the front yard of a dwelling in lieu of the rear yard; and (2) to permit a garage with a maximum height of 18 ft. in lieu of the required 15 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 for the garage Petitioners must obtain approval from the Ground Water Management section of DEPS.
3. Petitioners must provide to the satisfaction of the DOP a vegetative buffer in the area between the proposed garage and the property at 2004 Stockton Road.
4. The proposed garage shall not be used for commercial purposes and shall not contain living quarters or kitchen facilities.
5. Prior to issuance of permits for the garage Petitioners shall file among the land records of Baltimore County a declaration of understanding indicating the smaller dwelling (accessory apartment) may be occupied or utilized only by immediate family members, as that term is defined in Section 101 of the B.C.Z.R.

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