

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(8334 Bletzer Road)	*	OFFICE OF
15 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
Wellhan & Guang Li	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	Case No. 2018-0121-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 Wellhan and Guang Li, 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 for an accessory apartment in a detached accessory structure; and to amend the site plan to reflect the as-built condition for Case No. 2005-0644-A. A petition for variance seeks to permit an accessory apartment in an accessory structure with the size of 1,245 sq. ft. in lieu of the maximum of 1,200 sq. ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Wellhan and Guang Li appeared in support of the requests. Peter Zimmerman, Esq. participated in the hearing on behalf of the Office of People’s Counsel. 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”). The DOP objected to the request and the DEPS noted Petitioners must comply with the Chesapeake Bay Critical Area (“CBCA”) regulations.

SPECIAL HEARING

The zoning regulations permit an accessory apartment in a detached building when located on the same lot as the principal dwelling. The subject property is improved with a large single-family dwelling and a 2-story accessory building/garage. The first floor of the garage is unfinished and is used for storage of tools and household items. The second floor contains an apartment with kitchen and bathroom facilities. Petitioners stated the apartment will be used by family members, whose names are listed on the Declaration of Understanding included in the file.

The DOP objected to the request and believed it would constitute a second dwelling on the lot. That would be the case if the accessory apartment was occupied by individuals not related to the owners by blood, marriage or adoption. The DOP references a 2005 zoning case involving the property which prohibited the garage from being converted to a “second dwelling unit and/or apartment.” Of course, the law allowing “accessory apartments” was enacted in 2012, and the approval granted herein is under the auspices of that regulation. B.C.Z.R. §400.4. Approval is not being granted for a second dwelling, and several restrictions are included below to protect the surrounding community and ensure the accessory apartment is not used in a fashion which is “beyond the scope” of the aforementioned regulation.

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).

The property was found to be unique in a 2005 zoning case (No. 2005-644-A) and that finding is applicable in the current matter. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to use the second floor of the garage as an accessory apartment. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the lack of community opposition.

While the Petition as filed sought approval for a 1,245 sq. ft. apartment in lieu of the maximum 1200 sq. ft., the building footprint is 50' x 30' and thus, as discussed at the hearing, the petition was amended so that approval is sought for 1,500 sq. ft. in lieu of the maximum 1200 sq. ft.

THEREFORE, IT IS ORDERED this 5th day of **January, 2018**, 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 apartment in a detached accessory structure; and to amend the site plan to reflect the as-built condition for Case No. 2005-0644-A, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a 1,500 sq. ft. accessory apartment in an accessory structure in lieu of the maximum 1,200 sq. ft., be and is hereby GRANTED.

The relief granted herein shall be subject to 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. The accessory apartment shall not have a separate water or utility meter.

3. Petitioners must prior to issuance of permit(s) comply with CBCA requirements.
4. Petitioners must file among the land records of Baltimore County a completed copy of a Declaration of Understanding as approved by the Department of Permits, Approvals and Inspections. A copy of the fully-executed Declaration of Understanding must be provided to the Office of People's Counsel.
5. Petitioners must transfer ownership of the subject property from Li's Development 8334 LLC to Guang J. Li and/or Wellhan Li, and documentation evidencing such transfer must be provided within 90 days of the date hereof to the Office of People's Counsel.
6. The occupants of the accessory apartment and the occupants of the principal single-family dwelling must be related as immediate family by blood, marriage or adoption.

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:slh