

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(413 Osage Road)	*	OFFICE OF
8 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Salvatore & Karen Difatta	*	FOR BALTIMORE COUNTY
Legal Owners		
	*	Case No. 2018-0160-SPHA
Petitioners		
* * * * *		

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 Salvatore & Karen Difatta, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve an amendment to the Final Development Plan (FDP) for “Osage Crest”.

In addition, a petition for variance seeks to allow an accessory building (existing garage) to be located in the front yard of the lot in lieu of the required rear yard location. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Owners Salvatore and Karen Difatta and professional surveyor Geoffrey Schultz 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. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (“DOP”). That agency did not object to the requests.

SPECIAL HEARING

Petitioners submitted a copy of the Osage Crest Final Development Plan (“FDP”), approved in 1980. Petitioners’ Exhibit 9. Parcel 2 shown on the zoning site plan (Exhibit 1) corresponds to Lot 5 as shown on the Osage Crest FDP. The proposed reconfiguration of Lot 5

(which must be approved by the DRC as a lot line adjustment) requires the FDP be amended pursuant to B.C.Z.R. §1B01.3.A.7. The proposed reconfiguration is modest in scope and will not result in an increase in density. As Mr. Schultz noted, Petitioners are not proposing at this time to construct any improvements. Instead, all that is taking place is the relocation of a property boundary so an existing garage will be on the same lot as the dwelling at 413 Osage Road. As such I believe the amendment is consistent with the spirit and intent of the original plan, as required by the aforementioned regulation.

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).

The property is irregularly shaped and is therefore unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be required to raze or relocate the existing garage. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, 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 Baltimore County and community opposition.

THEREFORE, IT IS ORDERED this 9th day of **February, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve an amendment to the Final Development Plan (FDP) of “Osage Crest” (Lot 5 only), to reflect the relief granted herein, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to allow an accessory building

(existing garage) to be located in the front yard in lieu of the required rear yard location, 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 structure (garage) shall not be used for residential or commercial purposes.

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:sln