

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(6718 North River Dr.)	*	OFFICE OF
15 <sup>th</sup> Election District		
6 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
John & Cynthia Markley	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	<b>Case No. 2018-0224-SPHA</b>

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**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 John & Cynthia Markley, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve the use of an existing improved garage studio to be used occasionally as living quarters for out-of-town friends and family of the owners. A petition for variance seeks to permit a front setback for the existing garage to the road of 20 ft. in lieu of the required 25 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

John Markley 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”), the Bureau of Development Plans Review (“DPR”) and the Department of Environmental Protection and Sustainability (“DEPS”). None of the reviewing agencies opposed the requests.

## SPECIAL HEARING

The subject property is approximately 10,000 square feet in size and is zoned DR 5.5. The waterfront property is improved with a single-family dwelling and accessory building/garage. This case concerns only the accessory building in the rear of the property. The accessory structure is a one-story wood frame building, 14 ft. in height and approximately 800 square feet (approx.. 20'x40') in size. According to the site plan (Pets. Ex. No. 1) and photos submitted at the hearing (Pets. Ex. Nos. 5 J&K) half of the building is used for storage and a workshop while the other half is a studio apartment.

Petitioners explained this structure was most likely built many years ago and was lived in by the former owner while he was constructing the single-family dwelling on the lot in 1991. Petitioners presented a photo of a sticker from the Baltimore County "Department of Permits & Licenses" dated April 2, 1975, certifying that concealed wiring and an electric meter were installed in the accessory building at that time. Pets. Ex. No. 5L. Thus, I believe it is a fair assumption based on this evidence that the accessory building (at least in part) was used for living quarters since at least 1975.

At the hearing Petitioners indicated they initially considered seeking approval for an "accessory apartment" in the garage, and it appears they would satisfy the requirements of BCZR §400.4. Even so, Petitioners indicated some of the guests would not be related to them by blood, marriage or adoption and thus the approval would need to take a different approach. The DOP in its ZAC comment suggested the living quarters could be approved pursuant to a declaration of understanding similar to the one used in accessory apartment cases. I believe this is a reasonable and transparent way to resolve the special hearing request, which will be granted subject to the conditions noted below.

## 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 has an irregular shape (narrow and long) 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 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 absence of County and/or community opposition.

The Bureau of DPR indicated a sprinkler system must be installed in the studio garage. As noted above, these living quarters have been in use for many years, and the grant of special hearing relief should not be construed as approving a second dwelling or full-time residence on the subject property. Mr. Doak stated the law does not require an existing, older structure to be retrofitted with sprinklers, and as such I will not impose such a requirement in this case.

THEREFORE, IT IS ORDERED this 5<sup>th</sup> day of **June, 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 the use of an existing improved garage studio to be used occasionally as living quarters for out-of-town friends and family of the owners, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a front setback for the existing garage to the road of 20 ft. in lieu of the required 25 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. Petitioners must comply with the critical area regulations, as determined in the sole discretion of the DEPS.
3. The accessory structure may not be enlarged nor the exterior altered beyond that required for necessary maintenance.
4. The guest studio within the accessory structure shall not be leased or rented for compensation, and a rental housing license under Article 35, Title 6 of the Baltimore County Code may not be issued for the accessory structure.
5. Petitioners must within 60 days of the date hereof file among the land records of Baltimore County a declaration of understanding as approved by the OAH.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln