

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(18827 Spooks Hill Road)	*	OFFICE OF
6 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Vincent M. & Alison C. DeAugustino	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	Case No. 2019-0002-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 Vincent M. & Alison C. DeAugustino, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to allow the construction of an accessory structure (barn) without the existence of a primary structure on the subject property. A petition for variance seeks the following: (1) to permit a height of 29 ft. for the accessory structure (barn) in lieu of the maximum 15 ft.; and (2) to permit an accessory structure (barn) to be located in the side and rear of the proposed dwelling in lieu of the required rear yard. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Vincent DeAugustino 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 BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”).

SPECIAL HEARING

Petitioners acquired the 41+/- acre property last year, and plan to construct a single-family dwelling on the tract. Petitioners want to first construct a pole building/barn for storage of equipment and household items. Elevations of the barn were submitted (Petitioners' Exhibit 2) and Mr. DeAugustino noted the attractive carriage-style doors on the end of the structure will face the road. The structure is appropriate in a rural setting and will not overcrowd the lot or have a detrimental impact upon the community. As such the petition for special hearing 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).

The large parcel has irregular dimensions and is therefore unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct the accessory building in the proposed location. 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.

The DEPS ZAC comment indicated Petitioners were required to comply with Baltimore County's forest conservation regulations. Mr. Doak indicated he filed with DEPS a "single lot declaration of intent," which under BCC §§33-6-103 & 104 would exempt Petitioners from those

regulations. Mr. Doak noted the DEPS reviewer (Glenn Shaffer) was on vacation, and that he had not been able to discuss the ZAC comment with him. As such, I will not include the DEPS comment as a condition to the zoning relief. Whether or not Petitioners must comply with the forest conservation regulations will be determined by DEPS at the time of building permit application.

THEREFORE, IT IS ORDERED this 7th day of **September, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to Section 500.7 of the BCZR to allow the construction of an accessory structure (barn) without the existence of a primary structure on the subject property, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a height of 29 ft. for the accessory structure (barn) in lieu of the maximum 15 ft.; and (2) to permit an accessory structure (barn) to be located in the side and rear of the proposed dwelling in lieu of the required rear yard, 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 DOP ZAC comment, a copy of which is attached hereto and made a part hereof.

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