

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(11526 Falls Road)	*	OFFICE OF
8 th Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
Little Pond, LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2019-0159-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 Little Pond, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to permit an existing dwelling to be utilized as an occasional guest dwelling upon the construction of a primary dwelling (second dwelling on an RC-5 lot). A petition for variance seeks: (1) to permit an existing accessory structure (barn/garage) to be located in the front yard in lieu of the required rear yard; (2) to permit an existing accessory structure (barn/garage) with a height of 36' in lieu of the required 15'; (3) to permit a proposed accessory structure (barn) with a height of 24' in lieu of the required 15'; and (4) to permit a proposed accessory structure (barn) to be located in the front yard in lieu of the required rear yard. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

David Dunn and surveyor Bruce Doak appeared in support of the requests. J. Neil Lanzi, Esq. represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (“DOP”).

That agency did not oppose the requests and in particular expressed support for the reuse of the cottage/tenant house, which the DOP noted is of “historic interest.”

SPECIAL HEARING

The special hearing request concerns the brick cottage/tenant house which has existed at the site for many years. Petitioner proposes to use the structure to house on an occasional basis visiting family and friends. This is a reasonable request, especially considering that the subject property is in excess of 24 acres in size. Appropriate restrictions will be included in the Order below concerning the proposed use of this structure.

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 subject property has an irregular shape and the available building envelope is greatly constrained by environmental easements and features. As such the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because it would be unable to retain the existing accessory structures. Finally, I find that the variances 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 County and/or community opposition.

THEREFORE, IT IS ORDERED this 8th day of **January, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to Section 500.7 of the BCZR to permit an existing dwelling to be utilized as an occasional guest dwelling upon the construction of a primary dwelling (*i.e.*, a second dwelling on an RC-5 lot), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an existing accessory structure (barn/garage) to be located in the front yard in lieu of the required rear yard; (2) to permit an existing accessory structure (barn/garage) to exceed the maximum permitted height of 15'; (3) to permit a proposed accessory structure (barn) to exceed the maximum height of 15'; and (4) to permit a proposed accessory structure (barn) to be located in the front yard in lieu of the required rear yard, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner would be required to return the subject property to its original condition.
2. The existing tenant house/cottage may not be used as an accessory apartment unless approved pursuant to BCZR Section 400.4 following a public hearing.
3. A rental housing license may not be sought or issued for the tenant house/cottage and that structure may not be leased or rented for compensation.

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