

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(10600 Park Heights Avenue)	*	OFFICE OF
3 rd Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
A. Chapin Dupree & Franca S. Kraenzlin	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	Case No. 2019-0184-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 A. Chapin Dupree & Franca S. Kraenzlin, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve an accessory apartment located in a detached structure (garage) on the property. In addition, a Petition for Variance was filed pursuant to BCZR Sections 400.3 and 400.1 to allow an existing accessory structure 25 ft. in height in lieu of the permitted 15 ft., located in the front yard in lieu of the rear yard, with an area of 2,406 sq. ft. in lieu of the maximum 1,200 sq. ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Professional engineer Rick Richardson 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 Environmental Protection and Sustainability (“DEPS”), and the Department of Planning (“DOP”). Neither of the reviewing agencies oppose the request.

SPECIAL HEARING

While an accessory apartment is permitted without a hearing when located within a single-family dwelling, a special hearing is required for such a use in an accessory building. BCZR §400.4. The subject property is split-zoned RC-2 and RC-5 and is approximately 13.6 acres in size. Mr. Richardson noted that due to the size of the parcel and the topography, the improvements are barely visible from Park Heights Avenue. There is no indication using the existing two-story garage for an accessory apartment would have any discernable impact upon the community. As such the petition 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 an irregular shape similar to an arrowhead, and is therefore unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to use the existing structure for the accessory apartment. 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 County and/or community opposition.

THEREFORE, IT IS ORDERED this 12th day of **March, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to approve an accessory apartment located in a detached structure (garage) on the property, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to BCZR Sections 400.3 and 400.1 to allow an existing accessory structure (garage) 25 ft. in height in lieu of the maximum 15 ft., located in the front yard in lieu of the rear yard, with an area of 2,406 sq. ft. 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. Petitioners must prior to issuance of permits comply with the ZAC comment submitted by DEPS, a copy of which is attached.
3. The accessory building (garage) shall not be used for principal residential or commercial purposes.
4. Prior to issuance of a use permit for the accessory apartment Petitioners must submit to the Department of Permits, Approvals & Inspections (on a form approved by that agency) and file among the land records in circuit court the Declaration of Understanding referenced in BCZR §400.4.

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