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| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| (1202 Elm Ridge Avenue) | * | OFFICE OF |
| 13 th Election District | | |
| 1 st Council District | * | ADMINISTRATIVE HEARINGS |
| | | |
| Andrew Chilcoat | * | FOR BALTIMORE COUNTY |
| <i>Legal Owner</i> | | |
| Petitioner | * | Case No. 2019-0222-SPHA |
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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 Andrew Chilcoat, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve an accessory apartment (in-law) in a detached building. In addition, a Petition for Variance was filed pursuant to BCZR Section 400.3 to permit a height of an accessory building to be 23 feet in lieu of the maximum allowed 15 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Petitioner appeared in support of the requests. No protestants or interested citizens were 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 request.

SPECIAL HEARING

The subject property is 7,050 square feet in size and is zoned DR 5.5. The property is improved with a single-family dwelling constructed in 1930 and a detached garage in the rear yard. The previous owner apparently did not obtain a permit to construct the garage which is 23 ft. in height and necessitated the filing of the variance request.

Petitioner indicated his father plans to live in the apartment and he said the adjoining neighbors are supportive of the special hearing request. There is no reason to believe granting the request would have a detrimental impact upon the community and 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).

As noted above the garage was constructed many years ago and the variance request seeks to legitimize this existing condition. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be required to raze or reconstruct 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 lack of County and/or community opposition.

THEREFORE, IT IS ORDERED this 3rd day of **June, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to approve an accessory apartment (in-law) in a detached building, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a height of an accessory building to be 23 feet in lieu of the maximum allowed 15 ft., 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 his 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 detached garage shall not be used for commercial purposes.
3. A second utility meter may not be installed to serve the detached garage.
4. Prior to issuance of permit(s) and/or license(s) Petitioner must file among the land records of Baltimore County the Declaration of Understanding required by BCZR Section 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