

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(15829 Falls Road)	*	OFFICE OF
5 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Mittal & Harnisha Prajapati	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	Case No. 2019-0259-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 Mittal & Harnisha Prajapati, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve an accessory structure (proposed in-ground pool) on a lot currently without a principal use dwelling. In addition, a Petition for Variance was filed pursuant to BCZR Section 400.1 to allow an accessory structure (proposed in-ground pool) to be located in the side yard of a proposed dwelling lot in lieu of the required rear yard location. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Professional surveyor Geoffrey Schultz 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”), State Highway Administration (“SHA”) and the Department of Planning (“DOP”). None of the agencies opposed the request.

SPECIAL HEARING

The petition for special hearing is essentially a housekeeping matter. At present the subject property (approx. 23.29 acres, zoned RC-2) is unimproved, although Petitioners plan to begin construction on a single-family dwelling this spring. Petitioners also plan to have an in-ground pool adjacent to their new home, which may be constructed at or about the same time as the dwelling. The Office of Zoning Review instructed Petitioners to seek special hearing relief to address the potential scenario where permits would be issued for the construction of the pool prior to completion and occupancy of the new dwelling. I do not believe granting the request will have any impact upon the community and the petition will therefore 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 property has irregular dimensions and is impacted significantly by environmentally protected forest conservation areas. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the pool 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 County and/or community opposition.

THEREFORE, IT IS ORDERED this 7th day of **May, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to approve an accessory structure (proposed in-ground pool) on a lot currently without a principal use dwelling, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to BCZR Section 400.1 to allow an accessory structure (proposed in-ground pool) to be located in the side yard of a proposed dwelling lot in lieu of the required rear yard location, 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. Prior to issuance of permit(s) Petitioners must revise the site plan to include a note referencing potential inconveniences arising from agricultural operations, pursuant to BCZR §1A01.5.
4. Prior to issuance of permits Petitioners must obtain from the SHA an access permit for a paved apron onto Md. Rt. 25.

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