

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(2403 Benson Mill Road)		
5 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
3 <sup>rd</sup> Council District		
Richard A. & Christine Homberg	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2019-0285-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Richard A. & Christine Homberg, legal owners of the subject property (“Petitioner”). Petitioner is requesting variance relief from Sections 400.1 & 400.3 of the Baltimore County Zoning Regulations (“BCZR”): (1) to permit a one-story accessory garage structure to be located in the side yard in lieu of the required rear yard; and (2) to permit the height of accessory garage structure of 18 feet in lieu of the maximum 15 feet. A site plan was marked as Petitioners’ Exhibit 1.

James Matis, engineer, Richard Homberg and Tim Watts appeared in support of the petition. Petitioners were represented by Michael T. Wyatt, Esq. 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 Bureau of Development Plans Review (“DPR”).

The site is approximately 3.0 acres in size and is zoned RC-2.

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).

Testimony was presented that the subject property is a panhandle lot with a driveway on the east side; and is improved by an existing residential structure. The plan calls for  $\frac{3}{4}$  of the proposed accessory garage to be to the rear of that structure.

Petitioner notes that in addition to the panhandle shape of the site, the topography includes significant sloping and inclines; and is also restricted by an existing forest buffer in the rear of the property; all of which limits the available space for construction of the requested accessory garage. Based upon this testimony, I find that the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct a garage on the site. 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 absence of County and/or community opposition.

The Zoning advisory comments set forth that there is an existing 15 foot wide access easement to the forest buffer on the site which must be released to the property owner prior to the construction of the requested one-story proposed accessory garage structure. Testimony was presented by Mr. Matis that the Petitioners have agreed with Baltimore County to an “even exchange” of the east side easement, to be relocated to the west side of the property. It awaits County Council final approval.

THEREFORE, IT IS ORDERED, this 20<sup>th</sup> day of **June, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations (1) to permit an accessory garage structure to be located in the side yard in

lieu of the required rear yard; and (2) to permit the height of accessory garage structure of 18 feet in lieu of the maximum 15 feet, 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. This approval is conditioned upon the Petitioners obtaining a release from Baltimore County of the existing 15 foot wide Baltimore County access easement on the east side of the property.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed \_\_\_\_\_  
LAWRENCE M. STAHL  
Administrative Law Judge for  
Baltimore County

LMS/sln