

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(7814 Ruxwood Road)	*	OFFICE OF
9 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
4 <sup>th</sup> Council District	*	
	*	FOR BALTIMORE COUNTY
Jamieson & Cynthia Smith, <i>Legal Owners</i>	*	
Petitioners	*	<b>Case No. 2019-0351-SPHA</b>

\* \* \* \* \*

**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 Jamieson & Cynthia Smith, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to permit an accessory structure (garage) to be built prior to the final construction of the principal single family dwelling. In addition, a Petition for Variance was filed pursuant to BCZR Sections 400.1 and 400.3 to permit the height of an accessory structure (garage) of 21 ft. in lieu of the required 15 ft., and to permit the garage in the side yard in lieu of the required rear yard. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Jamieson & Cynthia Smith and surveyor Bruce Doak 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. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency did not oppose the request.

**SPECIAL HEARING**

As the name implies, an “accessory” structure is one that serves and is used in conjunction with a principal building or dwelling. Given the site configuration and constraints, Petitioners plan

to construct the garage prior to the single family dwelling. Petitioners submitted renderings of both the garage and single family dwelling, both of which will be reviewed and approved by the Design Review Panel (“DRP”). As such, I do not believe granting the request would have any discernable impact upon the surrounding community.

### VARIANCE

As to the variance, it requires 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 lot has an irregular shape and a significant change in grade across the site. 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 proposed 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 absence of County and/or community opposition.

THEREFORE, IT IS ORDERED this **30<sup>th</sup>** day of **July, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to permit an accessory structure (garage) to be built prior to the final construction of the principal single family dwelling, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit an accessory structure (garage) 21 ft. in height in lieu of the maximum 15 ft., and to be located in the side yard in lieu of the required rear yard, 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 or subsequent owners shall not convert the accessory building (garage) into a dwelling unit or apartment. The accessory building (garage) shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The accessory building (garage) shall not be used for commercial purposes.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln:dlw