

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(9 Albright Avenue)	*	OFFICE OF
2 <sup>nd</sup> Election District	*	ADMINISTRATIVE HEARINGS
4 <sup>th</sup> Council District	*	
	*	FOR BALTIMORE COUNTY
Kevin & Nancy O’Meara, <i>Legal Owners</i>	*	<b>Case No. 2019-0400-SPHA</b>
Petitioners	*	
* * * * *		

**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 Kevin & Nancy O’Meara, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve an accessory garage of 1,360 sq. ft. which is larger than the primary structure, which is 966 sq. ft. In addition, a Petition for Variance was filed pursuant to BCZR Section 400.3 to permit an accessory garage at 23 ft. high in lieu of the permitted 15 ft. high. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Kevin O’Meara 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”).

**SPECIAL HEARING**

Upon review of the file it became apparent that the square footage of the principal residence was incorrectly stated on the Special Hearing petition as 966 square feet. This is actually the square footage of the first floor only. The total above grade square footage of both

the first and second floors is, according to Mr. O’Meara, 1850 square feet. This is confirmed by the SDAT printout which lists it at 1852 square feet. As such, no Special Hearing relief is necessary because the proposed garage structure is only 1360 square feet and therefore does not exceed the square footage of the principal residence, and so it is in conformance with the BCZR.

### 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 property is of an irregular shape and has a “cut-out” in one corner where an old barn stands. This barn is on Mr. O’Meara’s parents’ property. He testified that he purchased his parcel from his parents back in 1987 so that he could build his residence there. As such, the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a hardship. Mr. O’Meara explained that his parents are now both deceased and the family is therefor in the process of selling the parents’ home. He has been using the aforementioned barn for all his storage needs but the barn will convey with the parents’ house. He therefore needs to construct this proposed garage for his storage needs. 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 15th day of **October, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing is dismissed as MOOT.

IT IS FURTHER ORDERED that the Petition for Variance to permit an accessory garage at 23 ft. high in lieu of the permitted 15 ft. high, 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 storage structure into a dwelling unit or apartment. The proposed structure shall not contain any sleeping quarters, living area, or kitchen or bathroom facilities.
3. The proposed structure shall not be used for commercial purposes.
4. There shall be no second utility meter(s).

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

Signed \_\_\_\_\_  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

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