

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(2526 Caves Road)	*	OFFICE OF
4 <sup>th</sup> Election District		
2 <sup>nd</sup> Council District	*	ADMINISTRATIVE HEARINGS
Chandler B. & Lena W. Denison		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	<b>Case No. 2019-0401-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 Chandler B. & Lena W. Denison legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve a waiver to allow a setback of 2 ft. from a proposed rebuilt detached garage to a riverine floodplain freeboard in lieu of the required minimum setback of 20 ft. In addition, a Petition for Variance was filed: (1) to allow an accessory building (proposed rebuilt detached garage) to be located in the front yard of the principal building in lieu of the required rear yard location; and (2) to allow an accessory building (proposed rebuilt detached garage) with a height of 25 ft. in lieu of the maximum allowed 15 ft. A site plan, prepared by Geoffrey Schultz , professional land surveyor from Polaris Land Consultants was marked and accepted into evidence as Petitioners’ Exhibit 1. The property is approximately 3.3 acres It is west of Caves road and south of Park Heights avenue. It is zoned RC2.

Chandler & Lena Denison appeared in support of the requests. They were represented by Adam Rosenblatt, Esquire. 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 Bureau of Development Plans Review

("DPR"), the Department of Environmental Protection and Sustainability ("DEPS") and the Department of Public Works ("DPW"). None of the agencies opposed the requested relief.

Because the Petition was unopposed I allowed Mr. Rosenblatt to proffer the general facts and bases for the requested relief. He proffered Mr. Schultz's credentials and offered him as an expert (while explaining he was not physical present). I accepted Schultz as an expert for purposes of the Site Plan that he had researched and created. (Exhibit 1). Mr. Rosenblatt explained that the Denisons purchased the property in 2012 and that a nearly 200 year old residence was on the property as well as a 100 year old garage structure. Both structures were in a state of deterioration and the Denisons are therefore razing both structures and replacing them with modern structures more suitable to their family's needs. Mr. Rosenblatt explained that FEMA has erroneously placed a small finger of the property near the garage within their 100 year floodplain map (this piece of the property is depicted on the Site Plain as a long, narrow strip extending up from the actual floodplain area). Mr. Denison, who is himself an engineer, testified extensively about the unique features and dimensions of the property, which includes a pond. He testified to the many landscaping improvements they have made, including native plantings around the pond to protect its water quality. Mr. Denison identified two aerial photos, one current (Exhibit 2a) and one which was taken in 1937 (Exhibit 2b). He explained that the 1937 photo shows that, due to the layout of the site, the garage structure was located in front of the residence, in the same place as the new proposed garage will be. Mr. Denison then explained that he hired a professional engineer for the purpose of filing a Letter of Map Amendment (LOMA) with FEMA to update the Flood Insurance Rate Map (FIRM), and that this LOMA was approved by FEMA on February 4, 2019 (Case No. 19-03-0230A). As a result, FEMA no longer considers this finger of the property to be in the floodplain. Mr. Denison testified that this part of the property never experiences any flooding. He

testified that he and Mr. Schultz have met on several occasions with the Department of Public Works (DPW) and that DPW agrees that, based on the LOMA that the finger of land in question is not in the floodplain and that the proposed garage structure is therefore not in violation of BCC Sec. 32-4-414 (c) (2). The DPW comment in the file confirms this fact. Mr. Denison further explained, with reference to the Site Plan and to a series of photos (Exhibit 3), that there are significant environmental constraints that preclude erecting the new garage to the rear of the principal residence as required by the BCZR. The comments from the Department of Planning confirm this fact and DOP does not oppose the Plan, in part because “[t]he proposed structure (garage) will not be visible from Park Heights Avenue.” As shown in the Exhibit 3 photos, the site is will screened from all surrounding residences.

Mr. Denison testified that the original residence had a basement that they used for storage and that the new home they are building will be on a slab, with no basement. This is why they are requesting the height variance on the property, because there will be extensive storage on the second level to replace the basement storage they are losing. He testified that the garage will never be used for residential or commercial purposes.

#### SPECIAL HEARING

BCZR Sec. 500.7 authorizes the Administrative Law Judge to grant the requested waiver pursuant to Sec. 500.6 of BCC Secs. 32-4-414, 32-4-107, and 32-8-301 in order to allow construction of the new garage with a setback of 2 feet from a Riverine Floodplain Freeboard in lieu of the required 20 foot setback as per the DPW Design Manual Plate DF-1.

As explained above, the floodplain issue was generated by an erroneous FEMA map which Mr. Denison has taken the time, money, and energy to correct by way of a LOMA. The

County's DPW concurs that this finger of land is not actually in the floodplain and DPW does not oppose the requested relief. The relief will therefore be granted.

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).

As described above, and as recognized by the DOP, this property is oddly shaped and has significant inherent environmental features which make it unique. With specific regard to the location of the proposed garage, it is noteworthy that it will simply replace an existing garage which has been in the same footprint for 100 years. It must be located in that area of the property because of the pond and floodplain in the rear of the principal residence. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the proposed detached garage. With regard to the requested height variance, the Denisons would have a dire shortage of storage space if they were forced to comply with the 15 foot height limitation on the garage. The garage is well screened from neighboring properties and, as noted by the DOP, will not be visible from Park Heights Avenue. I therefore find that this relief is appropriate. I also find that the variances 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 15<sup>th</sup> day of **October, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to approve a waiver to allow a setback of 2 ft.

from a proposed rebuilt detached garage to a riverine floodplain freeboard in lieu of the required minimum setback of 20 ft., be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance (1) to allow an accessory building (proposed rebuilt detached garage) to be located in the front yard of the principal building in lieu of the required rear yard location; and (2) to allow an accessory building (proposed rebuilt detached garage) with a height of 25 ft. in lieu of the maximum allowed 15 ft., 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 shall comply with and satisfy each of the comments of the Department of Environmental Protection and Sustainability which are contained in the case file.

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

PMM:sln