

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(8116 Redstone Road) *	OFFICE OF
11 <sup>th</sup> Election District *	ADMINISTRATIVE HEARINGS
5 <sup>th</sup> Council District	
Joseph A. Espodito, *	FOR BALTIMORE COUNTY
<i>Legal Owner</i>	
Petitioner *	<b>Case No. 2019-0497-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 Joseph A. Espodito, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) for amendment to the Final Development Plan (“FDP”) of Fox Creek Farm with respect to Lot 5 only. In addition, a Petition for Variance was filed pursuant to BCZR §1A04.3.B.2.B to allow a side yard setback of 18 ft. in lieu of the required 50 ft. for a principal dwelling. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Ben Battaglia appeared in support of the requests. John B. Gontrum, Esq. represented Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee (“ZAC”) comments were received from any of the County reviewing agencies.

**SPECIAL HEARING**

The record evidence establishes that Petitioner is entitled to the relief requested in the Special Hearing; to wit, an amendment to the Final Development Plan of the Fox Creek Farm development with respect to Lot 5 only. The amendment will simply allow the garage, which

was previously proposed to be free standing, to be connected to the principal residence via a breezeway. This amendment is within the spirit and intent of 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 lot in question is irregular in shape and has a steep topography in the rear of the residential structure. Further, it abuts a stormwater management area on the side facing the aforementioned garage. As such, the property is unique. The setback variance is now needed because of the proposed breezeway connection between the principal residence and the garage, which, under the BCZR, makes the garage part of the principal residence. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because they would be unable to construct the proposed breezeway connection. 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 **10th** day of **December, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing for amendment to the Final Development Plan (“FDP”) of Fox Creek Farm with respect to Lot 5 only, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to allow a side yard setback of 18 ft. in lieu of the required 50 ft. for a principal dwelling, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his 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, Petitioner would be required to return the subject property to its original condition.

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

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

PMM:sln