

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(7738 North Point Road)	*	OFFICE OF
15 th Election District	*	ADMINISTRATIVE HEARINGS
7 th Council District		
James A. and Carrie L. Wright,	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	Case No. 2019-0501-SPHA

* * * * *

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 James A. and Carrie L. Wright, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve an accessory structure of 2,500 sq. ft. (50 x 50) that is larger than the principal structure on the property that is 1,785 sq. ft. In addition, a Petition for Variance was filed pursuant to BCZR §400.3 to permit a 25 ft. height for an accessory structure in lieu of the maximum permitted 15 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

James Wright and Patrick Richardson of Richardson Engineering, LLC appeared in support of the requests. There were no protestants or interested citizens in attendance.¹ The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”).

¹ Five emails were received from neighborhood residents voicing opposition to the requested variance relief. However, none of these persons attended the hearing. The emails will be made a part of the file.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Mr. Wright testified that he purchased this residential property in 2000 from the former owner of Bauer's Trucking Company. He himself currently runs a trucking business. In 2003 he was granted a variance that permits him to park a vehicle weighing in excess of 10,000 lbs. on this residential lot, provided that the vehicle is kept inside the existing garage if it is parked there overnight. (Case No. 03-265-A).²Mr. Wright testified that he wants to build the new larger garage because it is very difficult to get his tractor-trailer in the existing garage and he also wants to store additional vehicles in the new garage, which will improve the appearance of the property. He testified that he scrupulously maintains his property and that he believes the new garage will benefit the neighbors in the new development next to him. That is because the side of his existing garage that faces the neighbors' back yards is 78 feet long and the proposed garage will only be 50 feet long. As proposed the new structure will only span the rear yard of one of the neighbors. An aerial photo of the site prior to the construction of the new "Shaw's Discovery" development was admitted as Petitioners' Exhibit 2. The development plat was admitted as Petitioners' Exhibit 3 and photos of the new homes backing to the Wright's property were admitted as Petitioners' Exhibit 4.

Further, Mr. Richardson testified that in deference to the neighbors and to the comments of DOP that they will move the proposed garage an additional four feet from the side property line so that there will be a 10 foot setback from the adjoining neighbor's rear property line. The proposed structure will then be moved four feet closer to the rear property line but that lot line adjoins a forest buffer easement so there will be no impact on any residences. Mr. Wright noted

² The DOP comments state that the 2003 Variance request was denied. DOP must have been unaware that the variance was subsequently granted after a Motion for Reconsideration was filed and another public hearing was held. That Order will be made a part of the file in this case.

that his existing garage was there when the new development was built, and all the new homeowners bought their homes knowing this. An architectural rendering of the proposed garage structure was admitted as Petitioners' Exhibit 5.

Based on the record evidence I believe the Petitioner is entitled to the special hearing relief. Specifically, I find that the proposed 50 foot by 50 foot garage can be built to replace the existing garage on this lot within the spirit and intent of the BCZR and without causing injury to the public health, safety or welfare. There is ample room on this lot for this proposed structure and it is not substantially larger than the existing garage.

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 fronts North Point Road and on both sides there are newer residences that back to it. The rear of the property borders a protected forest buffer. Further, the residence on this lot pre-dates the adjoining residences. Finally, there is an existing variance that allows the Petitioner to park a commercial truck in excess of 10,000 lbs. 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 a garage which will house the tractor-trailer and the additional vehicles now on the site. The 25 foot height variance is necessary in order to accommodate the 14 foot garage doors on the proposed new structure. Mr. Wright testified that there will be no actual second floor in the structure. I am mindful that some of the neighbors are opposed to the variance relief but I believe that this new structure is a sensible solution to the

current vehicle storage problem. I have also considered a point made by Mr. Wright. Namely, that these new neighbors were fully aware of the existing 78' by 24' garage on his property when they bought their new homes. 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.

THEREFORE, IT IS ORDERED this **17th** day of **December, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to approve an accessory structure of 2,500 sq. ft. (50 x 50) that is larger than the principal structure on the property that is 1,785 sq. ft., be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a 25 ft. height for an accessory structure in lieu of the maximum permitted 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. Prior to the issuance of any permits a new redlined plan shall be submitted showing the new setbacks discussed above (10 feet from the side property line and 6 feet from the rear property line).
3. Petitioner shall store his tractor trailer and other commercial vehicles inside the new garage structure.
4. Petitioner shall raze and properly dispose of the existing 24' by 78' garage.

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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