

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(12525 Garrison Forest Road)		
4 th Election District	*	OF ADMINISTRATIVE
2 nd Council District		
Henry H. Jenkins, III, et al	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0505-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Henry H. Jenkins, III, et al, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from § 400.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit an accessory use garage on a corner lot outside of the third of the lot farthest from both streets. A site plan was marked as Petitioners’ Exhibit 1.

Henry Jenkins appeared in support of the petition. David Ransone, the land surveyor who prepared the site plan also attended. 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 Department of Environmental Protection and Sustainability (“DEPS”) and from the Department of Planning (“DOP”). Neither agency opposed the requested relief. At the hearing the Petitioner asked to amend the Petition to allow for adjustments that his builder wishes to make to the structure. Namely, to alter the dimensions of the structure so that it will be 30 feet wide (rather than 24 feet) and 24 feet deep (rather than 25); and further, to allow a maximum height of 18 feet in lieu of 15 feet. Mr. Jenkins explained that he has contracted with an Amish builder and that this builder uses the more traditional steeper pitched roof line, which results in a slightly taller structure. This slight increase

in height will bring the roof pitch more into line with that of the existing residence. The site is approximately 35,588 sq. ft. in size and is zoned RC-5. There is a stream running across the rear of the property. The DOP comments recognize that this necessitates the siting of the proposed structure closer to the road.

A variance request involves 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).

Again, as noted by DOP, because of the stream the property, “is environmentally constrained as to where the garage can be located.” As such the property is unique. Further, as also noted by DOP, “if the BCZR were strictly followed, the building would have to be built directly next to the stream in the third of the lot furthest from the road.” This would not be environmentally or aesthetically sound. Also, as noted above, due to their choice of builder the Petitioners would experience a practical difficulty if the height restrictions were strictly enforced. Finally, I 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 20th day of **December, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 400.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit an accessory use garage on a corner lot outside of the third of the lot farthest from both streets, be and is hereby GRANTED.

IT IS FURTHER ORDERED, that the Amended Petition for Variance Seeking relief from

§ 400.3 of the BCZR allowing a building height of 18 feet in lieu of 15 feet, 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 issuance of Permits, Petitioners must comply with THE ZAC comments of DOP and DEPS, copies of which are attached hereto and made a part hereof.

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