

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1848 Circle Road)		
9 th Election District	*	OFFICE OF
2 nd Council District		
Gregory Milligan, Appointed Receiver	*	ADMINISTRATIVE HEARINGS
For Kevin B. Merrill		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2019-0511-SPH

* * * * *

AMENDED OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Gregory Milligan, Appointed Receiver for Kevin B. Merrill, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to modify the conditions imposed in Case Number 2016-0223-A to permit an existing bathroom and a half to remain in the existing pole barn/garage structure. A site plan was marked and admitted as Petitioner’s Exhibit 1.

Gregory Milligan appeared in support of the petition. Adam M. Rosenblatt, Esq. represented Petitioner. John B. Gontrum, Esq. appeared on behalf of the Ruxton-Riderwood-Lake Roland Improvement Association, Inc. (RRLRAI). 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”), which did not object to the requested relief.

SPECIAL HEARING

This case has a short but somewhat tortured history. In Case No. 2016-0223-A, Administrative Law Judge John Beverungen granted a variance for the construction of the garage at issue with a height of 28 feet in lieu of the required 15 feet. As a condition of that approval the ALJ stated that “[t]he Petitioner or subsequent owners shall not convert the pole barn garage into

a dwelling unit or apartment. The pole barn garage shall not contain any sleeping quarters, living area, and kitchen or bathroom facilities.” Subsequently the Petitioner, Kevin Merrill, in contravention of the Order, did in fact install kitchen and bathroom facilities in the garage.

By letter dated August 22, 2019 Adam Rosenblatt, Esquire wrote a “spirit and intent” letter to Judge Beverungen explaining that “my client [the Receiver, Mr. Milligan] took possession of the Property in its current condition and is attempting to ensure that the property is in compliance with your 2016 zoning order.” Mr. Rosenblatt explained that both kitchen and bathroom fixtures had been installed by the previous owner but that his client would be willing to remove all the kitchen appliances and maintain only the bathroom facilities and would confirm that the garage would be used for “private residential use only” if these measures would be deemed sufficient to comply with the Order. Subject to these conditions ALJ Beverungen signed the spirit and intent letter. *See*, Petitioner’s Exhibit 3.

Subsequently, by letter dated August 28, 2019, John Gontrum, Esquire, on behalf of the Ruxton-Riderwood-Lake Roland Improvement Association, Inc. (RRLRAI), wrote ALJ Beverungen. In this correspondence Mr. Gontrum explains that his client had just become aware of Rosenblatt’s spirit and intent letter, which the ALJ had just signed. Mr. Gontrum noted that a real estate broker was currently marketing the property as having an “au pair or in law apartment” in the garage, in direct contravention to the restrictions in the 2016 Order. *See*, Petitioner’s Exhibit 4.

On September 23, 2019 ALJ Lawrence Stahl, construed Mr. Gontrum’s letter as a motion to reconsider ALJ Beverungen’s approval of the spirit and intent letter, and he rescinded that approval. ALJ Stahl then reimposed the original conditions of the Order in Case No. 2016-0223-A and ordered the owner to remove *both* the kitchen *and* bathroom facilities. *See*, Petitioner’s

Exhibit 5.

Subsequently, counsel for the parties have negotiated an agreement by which the existing “home gym,” and bathroom facilities will remain in the garage structure, subject to various “agreed-upon restrictions.” *See*, Petitioner’s Exhibit 6. The parties have further agreed to execute and file a “Restrictive Covenant Agreement” among the land records of Baltimore County if the Special Hearing relief in this case is granted. *See*, Petitioner’s Exhibit 7.

I am satisfied that the agreement memorialized in Exhibits 6 and 7, which will allow the “home gym” and bathroom facilities to remain in the garage, but which require the removal of all kitchen appliances, are in keeping with the spirit and intent of the BCZR, and will not harm the public health, safety, and general welfare. I appreciate the good faith efforts of counsel and the parties to reach an amicable resolution of these issues.

THEREFORE, IT IS ORDERED this **10th** day of **January, 2020** by this Administrative Law Judge, that the Petition for Special Hearing to modify the conditions imposed in Case Number 2016-0223-A, so as to permit an existing bathroom and a half to remain in the existing pole barn/garage structure, be and hereby is, 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.
2. The appliances, facilities, and uses of the structure shall be limited strictly to those set forth in the “Agreed-Upon Conditions,” (Pet. Exh. 6) and “Restrictive Covenant Agreement,,” (Pet. Exh. 7), which are expressly incorporated herein, and which shall be appended to this Order.

Any appeal of this decision must be filed 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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