

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
S/S Glenwood Road, 541' SW of c/line		
Oakdean Road	*	ZONING COMMISSIONER
(3505 Glenwood Road)		
15 th Election District	*	OF
6 th Council District		
	*	BALTIMORE COUNTY
Joseph F. Shanahan, et ux		
Petitioners	*	Case No. 2010-0309-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the legal owners of the subject property, Joseph F. Shanahan, and his wife, Patricia A. Shanahan, through their attorney, Arnold E. Jablon, Esquire, with Venable, LLP. The Petitioners request a special hearing under Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a separate living space for a member or members of their immediate family above an existing garage and to amend Restriction No. 2¹ contained in the Order issued in Case No. 08-324-A to permit the separate living space as requested above. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 3.

Appearing at the requisite public hearing in support of the request were Arnold Jablon, Esquire and Joseph and Patricia Shanahan, property owners. There were no adverse Zoning Advisory Committee (ZAC) comments received except from the Office of Planning, which recommends denial. There were no Protestants or any other interested parties present. The case proceeded by proffer and by testimony. It is important to note that Mr. and Mrs. Shanahan queried all of their immediate and surrounding neighbors, who are in support. All are within eyesight of the subject property and all signed a petition of support, which was accepted into

¹ As filed, the Petition refers to the Restriction to be deleted from 08-324-A as No. 2; however, at the beginning of the hearing, Mr. Jablon amended the Petition to refer to Restriction No. 3 as the appropriate reference.

evidence as Petitioners' Exhibit 5.

Testimony and evidence offered revealed that the subject property is an irregular, rectangular shaped waterfront parcel located on the south side of Glenwood Road in eastern Baltimore County. The property contains a gross area of 12,870 square feet, more or less, and is zoned D.R.3.5. The property is improved with a 1-½ story frame home of approximately 1,385 square feet built in 1939, and features a 56 foot pier out into the tidal waters of Frog Mortar Creek, and a garage (32' x 24' x 26') located in the rear yard, which is road side. An aerial was submitted noting existing conditions and improvements on the subject and adjacent properties. *See* Petitioners' Exhibit 4. The property has been in the Shanahan family since 1949, and passed from Mr. Shanahan's parents to him and his wife in or about 1996.

In Case No. 08-324-A, the undersigned Commissioner approved the detached accessory garage, referred to previously, and located adjacent to the road which was determined to be the rear yard. Mr. Shanahan, at that hearing, testified the garage would be used for storage for his vehicles and tools. The variance requested then, and approved, was to permit the height of the garage to be 26 feet in lieu of the permitted 15 feet. The request was initiated because the Petitioners desired the use of the area above the garage for useable storage space. The height of the garage was approved, with conditions. One of which, No. 3, limited the garage to "uses accessory to the residential use of the property. It shall not be used for commercial or business purposes ... not allow or cause the garage to be converted to a second dwelling unit and/or apartments ... no living quarters contained therein, and no kitchen or bathroom facilities." The garage has now been constructed but is awaiting inspection for use and occupancy.

The filing of the instant petition was precipitated when Mr. Shanahan asked BGE to install a separate power line into the garage and was told this could not be done without Baltimore County zoning approval. In addition, over the past few years, the Shanahans began to

consider the need to have Mrs. Shanahan's mother come and live with them. Mrs. Shanahan's mother (Joan Mitchell) is elderly and is fast approaching the time when she cannot live independently. They do not want for her to live in a nursing or convalescent home. Mrs. Shanahan wants her mother to live with them. However, their house does not provide the relative independence Mrs. Shanahan's mother believes she needs. At the same time, their son (Michael Shanahan) needs to be moving back home and, again, there is not sufficient room in the house at this stage of their and their son's lives to allow him to move back into the house. It appears now more likely that it is Mrs. Shanahan's mother who would live in the requested apartment rather than their son, due to her age and frailty. Thus, they have filed the instant petition.

The Petitioners request the elimination of Restriction No. 3 in Case No. 08-324-A, as quoted above, in order to maintain living quarters, which would be a living room, kitchen, one bedroom, and utility room, above the garage in what had been intended as the storage area. As indicated previously, the Shanahan family has owned this property since 1949 and they testified they have every intention of passing the property to their children.

The Shanahans testified that their purpose is not to create an apartment for rent, but to provide quarters for their son or Mrs. Shanahan's mother. Mr. Shanahan testified it is more than likely the apartment above the garage would be for Mrs. Shanahan's mother, who is more and more in the need of care and support as she is becoming less able to provide for herself.

In support of the request, Petitioners' attorney, Mr. Jablon, noted the property is zoned D.R.3.5, which does permit more than one dwelling on a lot. Admittedly, to have more than one dwelling unit on a lot, there are certain setback and area requirements that need to be satisfied. *See* B.C.Z.R. Section 402.1. The subject lot could not meet certain of those requirements, but could meet others. This is important, Mr. Jablon argues, because the underlying zoning does not prohibit more than one dwelling. The primary purpose of the accessory structure is still to be a

garage. The Shanahans agree that they would never rent the apartment to a third party, and would be willing to record a restrictive covenant agreement to run with the land to prohibit renting and, further, when not used by an immediate family member or should they sell the property, whichever occurs first, the kitchen would be removed. Mr. Shanahan will store his vehicles and tools in the garage.

Considering all the testimony and the evidence presented, I am persuaded to grant the special hearing relief. It is clear that the request does not adversely impact the neighborhood, nor is it detrimental to the health, safety or general welfare of the community. By allowing the proposed arrangement, the density of the property would not be increased above what is allowable in the D.R.3.5 zone.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 29th day of June, 2010, that the Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to: (1) permit the detached garage to be a separate living space for a member of the Petitioners' immediate family; and (2) to delete Restriction No. 3 of the Order issued in Case No. 08-324-A, in accordance with Petitioners' Exhibit 3, be and are hereby GRANTED, subject to the following:

1. Petitioners may apply for a building permit, if necessary, and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. The apartment shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy.

3. The Petitioners shall within 30 days of a final, non-appealable Order in this matter record amongst the Land Records of Baltimore County a Covenant to the Deed of their property (in the form attached), by which the Petitioners agree the kitchen will be removed upon the earlier of the following events: (a) the living quarters shall be used only by the in-law or son and not as an independent residential unit, and shall not used by any other person or for any other reason; (b) upon the death of the in-law, or if the in-law or son leaves or otherwise vacates, or the Petitioners move or sell the Property, whichever occurs first, the kitchen will be removed. A copy of the recorded Declaration shall be submitted to the Department of Permits and Development Management for inclusion in the case file.
4. The Petitioners shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management reasonable access to the caretaker/in-law quarters over the garage to insure compliance with this Order.
5. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

COVENANT AND DECLARATION OF UNDERSTANDING

Whereas, in a Petition for Special Hearing before the Zoning Commissioner of Baltimore County, Case No. 2010-0309-SPH, Joseph F. Shanahan and Patricia A. Shanahan, the Petitioners, requested permission to maintain a one (1) bedroom “accessory in-law apartment” over their detached garage to be used as a separate living space for a member/or members of the immediate family, and the Zoning Commissioner, by Order, dated June 29, 2010, granted the request providing the following covenant be added to their Deed, which Deed was recorded in the Land Records of Baltimore County, at Liber 11766, Folio 434.

Joseph F. Shanahan and Patricia A. Shanahan hereby covenant that the accessory separate living space shall be used as an in-law apartment for the care and benefit of Petitioners elderly family members or son and the use shall be terminated, at such time as the Petitioners or a family member no longer reside on the property, or the subject property is sold, whichever occurs first, and no future purchaser shall maintain the “accessory in-law apartment” without a subsequent special hearing.

As witness our hands and seals this _____ day of June 2010.

_____(SEAL)
Joseph F. Shanahan

_____(SEAL)
Patricia A. Shanahan

(State of Maryland

To wit

County of Baltimore)

I HEREBY CERTIFY THAT ON THIS _____ day of _____, 2010, before me a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared Joseph F. Shanahan and Patricia A. Shanahan, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument, and acknowledge that they executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal:

NOTARY PUBLIC

My Commission Expires: