

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(8038 Bradshaw Road)	*	OFFICE OF
11 th Election District		
3 rd Councilmanic District	*	ADMINISTRATIVE HEARINGS
Roland Benjamin Sr. &		
Roland Benjamin Jr. Cassett	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2013-0152-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Robert Benjamin, Sr. and Robert Benjamin, Jr. Cassett, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to determine whether or not the Zoning Commissioner should approve an accessory structure (garage) to have a larger footprint (1500 sq. ft.) than the existing dwelling (1280 sq. ft.). The variance relief sought to permit a garage 18' in height, in lieu of the required 15'. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was Robert Cassett, Jr. and Scott A. Lindgren from Gerhold, Cross & Etzel, LTD., the firm that prepared the site plan and who is assisting the Petitioners through the permitting process. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance, and the file does not contain any letters of protest or opposition.

No substantive Zoning Advisory Committee (ZAC) comments were received from any County agencies.

The subject property is 1 acre in size and is zoned RC-5. The site is improved with a single family dwelling and a garage. The garage is in extreme disrepair and the Petitioner proposes to raze that structure and replace it with a new garage (30' x 50'). The single family dwelling on the property is modest in size (1280 sq. ft.) and the proposed garage is only slightly larger (1500 sq. ft.). In fact, as noted by Mr. Lindgren, there is a large covered porch off the rear of the dwelling (which is not included in the area calculation) and thus in reality the buildings will appear to be similarly sized. The new garage will greatly enhance the appearance of the property, and the Special Hearing relief will be granted.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. people's Counsel, 407 Md. 53, 80 (2008).

The Petitioners have met this test. The property is narrow and deep, as shown on the site plan. Thus, it is unique for zoning purposes. The Petitioners would experience a practical difficulty if the regulations were strictly enforced, because they would be unable to construct the garage roof with an appropriate pitch, compromising the appearance and functionality of the structure.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., 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 opposition from the community and County reviewing agencies.

Pursuant to the advertisement, posting of the property, and the public hearing, and after considering the testimony and evidence offered, I find that Petitioners' Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED this 1st day of March 2013, by this Administrative Law Judge, that Petitioners' request for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to approve an accessory structure (garage) to have a larger footprint (1500 sq. ft.) than the existing dwelling (1280 sq. ft.), be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' Variance request from § 400.3 of the B.C.Z.R., to allow an accessory structure (garage) to have a height of 18 ft. 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 appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioners or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.

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

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County