

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(603-605 Oakdean Road)	*	OFFICE OF
15 th Election District		
6 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
Classic LLC		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2013-0174-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 Wm. Oliver Hardy, Member, Classic LLC, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit an accessory structure (garage) on a lot without a principal use. The variance relief from B.C.Z.R. §§ 417.3, 417.4 and 400.3 sought to permit: (1) an encroachment of 15' beyond the divisional property line for a pier and mooring piles, and; (2) to permit an accessory structure (garage) with a height of 22' in lieu of the permitted 15'. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1A and 1B.

Appearing at the public hearing in support of the requests was Oliver Hardy and David Billingsley, with Central Drafting and Design, Inc., who is assisting the Petitioner and prepared the site plans. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received and are included in the file. The Bureau of Development Plans Review (DPR) indicated Petitioner must comply with floodplain regulations, and the Department of Environmental Protection and Sustainability

(DEPS) noted that Petitioner was obliged to comply with Chesapeake Bay Critical Area (CBCA) regulations.

The subject property is 59,900 square feet in size (approximately 1.38 acres) and is zoned DR 3.5. The property is vacant, and the Petitioner proposes to construct a garage and pier on the site. To do so requires zoning relief.

With regard to the petition for special hearing, the relief requested is both reasonable and modest. Mr. Hardy's son owns a home adjoining the subject property, and the garage will be used to store jet-skis and other "toys" he has accumulated. The proposal in no way will negatively impact the community, and the petition for special hearing will therefore be granted.

Based upon the testimony and evidence presented, I will also 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 Petitioner has met this test. As seen on the site plan and aerial photos, this waterfront property has a very irregular shape and is therefore unique. See Exhibits 1 and 5. The Petitioner would experience a practical difficulty, if the regulations were strictly enforced, given that this large and valuable waterfront property would be unable to have a pier, an amenity enjoyed by nearly all of the adjoining properties, many of which are much smaller than the subject property.

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 lack of County and community opposition.

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

THEREFORE, IT IS ORDERED this 27th day of March 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing to permit an accessory structure (garage) on a lot without a principal use, filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's Variance request from B.C.Z.R. §§ 417.3, 417.4 and 400.3 to permit: (1) an encroachment of 15' beyond the divisional property line for a pier and mooring piles, and; (2) to permit an accessory structure (garage) with a height of 22' in lieu of the permitted 15', be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw