

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(2509 Butler Road) *	OFFICE OF
8 th Election District	
3 rd Council District *	ADMINISTRATIVE HEARINGS
Michael Lund & Charlene Debra Petersen	
Petitioners *	FOR BALTIMORE COUNTY
	Case No. 2014-0207-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 Michael Lund & Charlene Debra Petersen, the legal owners. The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit an accessory dwelling for the residence of a full time employee providing care of the owner’s family. The variance petition seeks relief from B.C.Z.R. § 400.3 to permit a height of 26 ft. for a garage/accessory dwelling in lieu of the required 15 ft.

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 Charlene Petersen and Bruce E. Doak, whose firm prepared the site plan. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance, nor does the file contain any letters of opposition. There were no substantive Zoning Advisory Committee (ZAC) comments received.

The subject property is over 140 acres (three separate parcels) in size and is zoned RC 2, although all improvements are on Lot 1, which is 27.686 acres. The Petitioners purchased the property in 2011, and are constructing a large dwelling, garage and other amenities on the site.

The Petitioners travel extensively, and would like to provide a caretaker/nanny's residence on the second floor of the proposed garage, but to do so requires zoning relief.

Based on the size and topography of the subject property, it does not appear that the proposed improvements would be visible to anyone off-site. As such, I do not believe the requested relief would be in any way detrimental to the community. While the height variance is essentially a "plain-vanilla" request, the petition for special hearing presents a taxonomical difficulty which is discussed below.

To obtain variance relief a petitioner must show:

- (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).

Petitioners have met this test. The large property is of very irregular dimensions, and is therefore unique. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty, given that Petitioners would be unable to construct the proposed garage with second floor living quarters. 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 County and/or community opposition.

The Petition for special hearing seeks approval for an "accessory dwelling." While I am sympathetic to Petitioners' plight in framing the nature of the relief sought, I do not believe that a "dwelling" is an appropriate characterization, given that only one dwelling per lot is permitted in the RC 2 zone. B.C.Z.R. §1A01.3.B.4. The proposed use is similar to an "accessory apartment," although residency would not be restricted to immediate family members. I believe the most accurate description is that Petitioners seek approval for living or staff quarters in an accessory building (garage). As shown on the plans and renderings, the "apartment" would be situated

above a three car garage, and would be accessed by exterior stairs. Petitioners' Exhibits 4 & 5. Again, given the size and location of the property, I do not believe that granting such a request would be detrimental to the community, and it is not uncommon to have living quarters for caretakers or tenant farmers on large agricultural parcels in this part of the County.

THEREFORE, IT IS ORDERED this 9th day of June, 2014, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to permit living quarters in an accessory building (garage) for the residence of a full time employee providing care of the owner's family, be and is hereby GRANTED .

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. § 400.3 to permit a height of 26 ft. for an accessory building (garage) in lieu of the required 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 living quarters approved herein shall be occupied only by an employee(s) providing care for the Petitioners' family.

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