

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(Keech Road)	*	OFFICE OF
13 th Election District		
1 st Councilmanic District	*	ADMINISTRATIVE HEARINGS
James A. & Laura L. Rudy		
Petitioners	*	FOR BALTIMORE COUNTY
	*	Case No. 2014-0039-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 James A. and Laura L. Rudy, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve the construction of an accessory building (in-law apartment) on the same lot as their principal dwelling. The Variance petition seeks relief from B.C.Z.R. §§400.1 and 400.3 to permit a proposed detached accessory structure (garage/in-law apartment) to be located in the side yard of the principal dwelling and have a height of 30 ft. in lieu of the required rear yard and maximum allowed 15ft., respectively. 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 James Rudy. The file reveals that the Petition was advertised and the site was posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of opposition.

Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS) and Department of Planning (DOP). DEPS

noted Petitioners must comply with the various environmental regulations set forth in Article 33 of the Baltimore County Code. DOP expressed concern with the size of the accessory structure, a point discussed below.

The subject property is 10.47 +/- acres in size and is zoned RC 5. The Petitioners purchased the property (which is improved with a barn that will be razed) several years ago, and propose to construct a single family dwelling and detached in-law apartment on the site. The property is near the intersection of Keech and Gun Roads, which is a rural and sparsely populated section of Catonsville. Special Hearing relief is required given that the accessory apartment would be detached from the proposed single family dwelling. The Petitioners have engaged an architect to design the home and accessory apartment, and they will be situated on the site such that the front of the structures will be visible to guests arriving from Keech Road. Mr. Rudy testified the accessory building will be occupied by his in-laws, and he indicated a declaration (as required by law) to that effect has been prepared for filing among the land records.

The DOP took issue with the proposed size of the accessory apartment, and in most cases seeking such relief I would share their concern. But the Petitioners own a 10 ½ acre lot in a rural setting, and the proposed single family dwelling will be over 7,000 square feet while the accessory apartment will be approximately 2,300 square feet. In these circumstances, I believe the accessory building (though large) will not be out of scale with the other improvements on site, and the large lot provides a more than sufficient buffer from neighboring homes. The Petitioners shared their plans with the Gun Road Historical and Protective Association, which indicates that it (and the neighbors in the vicinity) was supportive of the request. Petitioners'

Exhibit 2. As such, I believe the Petitioners have satisfied the factors set forth in B.C.Z.R. §502.1, which is incorporated into the accessory apartment regulation. B.C.Z.R. §400.4.

Based upon the testimony and evidence presented, I will also grant the petition for variance. 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 subject property is large and irregularly shaped, and is therefore unique. The Petitioners would experience a practical difficulty if the regulations were strictly interpreted, given they would be unable to construct the proposed accessory building. The grant of relief would not in my opinion be detrimental to the health, safety or welfare of the community.

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 21st day of October 2013, by this Administrative Law Judge, that the request for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to approve the construction of an accessory building (in-law apartment) on the same lot as Petitioners' principal dwelling, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Variance relief to permit a proposed detached accessory structure (garage/in-law apartment) to be located in the side yard of the principal dwelling and have a height of 30 ft. in lieu of the required rear yard and maximum allowed 15ft., respectively, 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. Petitioners must comply with the ZAC comments of DEPS, attached as an exhibit hereto.
3. Petitioners, must comply with §400.4 (Accessory apartments) of the B.C.Z.R. and shall not convert the accessory apartment into a second dwelling, which is prohibited under the regulations.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln