

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(13924 Baldwin Mill Road)	*	OFFICE OF
11 th Election District		
3 rd Councilmanic District	*	ADMINISTRATIVE HEARINGS
George & Joann Holback	*	FOR BALTIMORE COUNTY
Petitioners	*	
	*	Case No. 2014-0005-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 George and Joann Holback, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve an accessory structure for use as an in-law apartment. The Variance petition seeks relief from B.C.Z.R. §§400.1 and 400.3 to permit an accessory structure to be located in the front yard and side yard in lieu of the required rear yard with a height of 23 ft. in lieu of the permitted 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 George and Joann Holback. 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 indicating that the property must comply with the Forest Conservation Regulations, and a future building permit, for an in-law apartment, must be reviewed by Groundwater Management. Mr. Lippincott of that agency expressed concern with

the request, noting that the proposed structure would appear to provide for permanent as opposed to temporary residential use. This is a valid concern, discussed in detail below.

The subject property is 5.966 acres in size and is zoned RC 2. The Petitioners indicated they have health problems, and would like to construct on the property a 1,200 sq. ft. accessory building as their dwelling. Their daughter would purchase their existing single family dwelling and live there with her family.

The variance requests for the height and yard placement are uncontroversial, especially given the size of Petitioners' lot (approximately 6 acres). In addition, as shown on the aerial photos, the lot is wooded and set back from the public road (Baldwin Mill) on a private panhandle driveway.

It is the "in law" apartment aspect of the case that merits greater scrutiny. As noted by Mr. Lippincott, it appears on its face that Petitioners are essentially constructing a second dwelling on this lot, which of course would not be permitted under the B.C.Z.R. But after learning the details of the proposal, I believe that the request is in keeping with Council Bill 49-11, now codified at B.C.Z.R. § 400.4. In the Bill's preamble, the Council "recognize [d] that with an aging population, the need exists for elder family members to have access to care and comfort from their children on the same owner occupied property as that of the principal single-family detached dwelling." The Petitioners' proposal would seem to fit squarely within the Council's stated purpose and intent in enacting this legislation. There is always the risk that such an apartment could be rented to or utilized by someone other than an immediate family member, a point not lost on the Council. The law contains several provisions - - including the declaration of understanding which is filed in the land records and the renewal process - - designed to ensure

compliance and notify owners and prospective purchasers of the conditions under which the apartment may be occupied. As such, I will grant the petition for Special Hearing.

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. This large parcel is of irregular dimensions 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.

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 5th day of September 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to approve an accessory structure for use as an in-law apartment, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Variance relief to permit an accessory structure to be located in the front yard and side yard in lieu of the required rear yard with a height of 23 ft. in lieu of the 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. Prior to obtaining permits, the Petitioners shall obtain from the Department of Permits Approvals and Inspections (PAI) a use permit and must at all times comply with the requirements of the B.C.Z.R. §400.4 concerning the use and occupancy of the proposed accessory apartment.

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