

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(21535 Middletown Road) *	OFFICE OF
6 th Election District	
3 rd Council District *	ADMINISTRATIVE HEARINGS
Sean W. & Megan W. Dobbs	
<i>Legal Owners</i> *	FOR BALTIMORE COUNTY
Petitioners *	Case No. 2015-0114-SPH
* * * * *	

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of the legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to permit an accessory (in-law) apartment permitted as a temporary use within an accessory building situate on the same owner occupied lot as the principal dwelling; and (2) to permit such accessory (in-law) apartment prior to the issuance of the use and occupancy certificate of the principal dwelling. In addition, a Petition for Variance seeks the following: (1) to permit an accessory apartment within an existing accessory building with a square footage of 2146 in lieu of the maximum 1200 square feet per §400.4B2; (2) to permit an accessory apartment building to have a separate utility meter for electric in lieu of the same meter per §400.4A1c; (3) to permit the accessory apartment/building to have a separate well and septic system in lieu of the same per §400.4B4; and (4) to permit the accessory apartment/building to be located in the side yard in lieu of the required rear yard per §400.1.

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 Petitioner Sean Dobbs. Bruce Doak from Bruce E. Doak Consulting,

LLC, appeared on behalf of the Petitioners. Nancy Sharper and Michael Pierce appeared as Protestants.

Variations are granted under §307.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) “only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship. . . . Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent. .” of the zoning regulations. Maryland Appellate Courts are also clear on the subject. In *Trinity Assembly of God v. People’s Counsel*, 407 Md. 53, 80 (2008) the Court held that a Petitioner must prove (1) That the property is unique; and (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship. The oft quoted case of *Cromwell v. Ward*, 102 Md. App. 691, 700-01 (1995) holds that “the general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances . . . A variance should be strictly construed . . .” It is clear that only physical aspects such as narrowness, shallowness, shape, or topographical or other extraordinary situations, would warrant the granting of a Variance *Stacey*, 239 Md. @ 193, 210a.2nd 540.

Petitioner has not met this test. He argues that this is a “unique” situation in part because this is the first such request in an RC 2 zone and more so because he believes that the already existing residence on the subject property is not adequate “in today’s standards”. Petitioner presented no evidence as to any unique situation or quality in the property’s dimensions, topographically or other relevant factors.

Unfortunately, there is simply nothing about the Petitioners property that meets the definition of “uniqueness” in the B.C.Z.R. or in the applicable case law. Contrary to Petitioners suggestion, it being the first such request in an RC 2 zone has no “uniqueness” quotient at all; and additionally, there was testimony from Protestants that there are a number of older homes in the area, many of whom are remodeled and renovated.

As to a practical difficulty, nothing in the applicable zoning prevents Petitioner from improving or replacing the residence already on the properties; and including a “mother-in-law apartment” in that project.

As to the Special Hearing requests, the subject residence is neither “accessory” nor “subordinate” to an existing “main building” on the property. It **is** the “main building”, in size and structure. To allow it to be determined simply to be “accessory” and then construct another “main building” would circumvent the regulations. In any event, without the granting of the requested Variance, the Special Hearing request is MOOT.

Finally, I find that the spirit and intent of the RC 2 zone is to clearly limit residential construction. Petitioner could build another structure on the property by availing himself of the one permitted sub-division. His present request could conceivably result in three dwelling structures on the property- - - a result not envisioned as appropriate when the RC 2 zone was established.

THEREFORE, for all the above reasons, It Is Ordered this 24th day of February, 2015, by this Administrative Law Judge, of Baltimore County that the Petition for a Special Hearing and Variance set forth in this matter, be and is hereby DENIED.

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

LMS/sln

Signed _____
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County