

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(2346 Schaffers Road)	*	OFFICE OF
15 <sup>th</sup> Election District		
7 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
High Tide, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	<b>Case No. 2016-0140-SPHA</b>

\* \* \* \* \*

**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 High Tide, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”): (1) to confirm the conversion of an existing accessory structure from an apartment to guest quarters. The proposed guest quarters will include three bathrooms and three bedrooms to be used by guests and will not include a kitchen. It is not the intent that the guest quarters will function as an apartment; and (2) request confirmation of the property line setbacks from the Department of Environmental Protection and Sustainability (DEPS). In addition, a Petition for Variance seeks to locate the proposed in-ground pool within the side yard of the principal dwelling. The Petition was amended at the hearing to add an additional variance request (pertaining to the side yard location of the “guest quarters” accessory building) as suggested by the Department of Planning. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Devin Leary, a registered landscape architect. Matthew L. Kimball, Esq., represented the Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as

required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) and the Department of Environmental Protection and Sustainability (DEPS).

The subject property is 3.5 acres and zoned RC 20, which is a “Critical Area” zoning designation. The property is improved with a single-family dwelling and an accessory building which was used historically as an apartment. Petitioner proposes to enlarge the principal dwelling to serve as a “main house,” and would raze and rebuild the accessory building which would function as a guest quarters for family and friends. The units in the accessory building would not have kitchens, but would have sleeping accommodations and bathrooms. The units would not be occupied by tenants, and would therefore not be considered “apartments.”

The special hearing requests essentially seek confirmation and documentation of the uses described above. In addition, since the regulations do not specify minimum lot size or setbacks in the RC 20 zone, the petition for special hearing also seeks confirmation of the setbacks approved by DEPS. It is worth noting both the single-family dwelling and accessory building were constructed in the 1950s, so those are long existing site conditions. The lot size is 3.5 acres, which exceeds the minimum lot size specified in other RC zoning categories. In addition, the setbacks approved by DEPS are substantial and also far exceed the minimum setbacks of other RC zoning categories. As such, the petition for special hearing will be granted.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Petitioner has met this test. The waterfront property is essentially a peninsula, and is therefore unique. If the B.C.Z.R. were strictly interpreted, Petitioner would experience a practical difficulty, given it would be unable to construct the proposed improvements. 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/or community opposition. The Bureau of DPR indicated a landscape plan would be required if the proposed improvements would constitute a 50% or larger increase in the square footage of the existing structures. Mr. Leary explained, and the plan confirms, the dwelling and accessory building will essentially occupy the same footprint as the existing structures, and thus a landscape plan is not required.

THEREFORE, IT IS ORDERED this 15<sup>th</sup> day of April, **2016**, 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.”): (1) To confirm the conversion of an existing accessory structure from an apartment to guest quarters. The proposed guest quarters will include three bathrooms and three bedrooms to be used by guests and will not include a kitchen. It is not the intent that the guest quarters will function as an apartment; and (2) Request confirmation of the property line setbacks from the Department of Environmental Protection and Sustainability (DEPS), be and is hereby GRANTED;

IT IS FURTHER ORDERED that the Petition for Variance which seeks to locate the proposed in-ground pool within the side yard of the principal dwelling, and the accessory building (guest quarters) within the front and side yards of the principal dwelling, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Prior to issuance of permits Petitioner must comply with the Critical Area regulations.
3. Prior to building permit application, Petitioner must contact the Department of Public Works to determine the flood protection elevation for the property.

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