

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(2117 Oak Road)</b>		
15 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Barry Jackson and Emily Kirk	*	HEARINGS FOR
<i>Legal Owners</i>		
	*	BALTIMORE COUNTY
Petitioners		
	*	<b>CASE NO. 2016-0279-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as Petitions Special Hearing and Variance on behalf of Barry Jackson and Emily Kirk, owners of the subject property (“Petitioners”). The special hearing request seeks to permit an accessory structure (garage) on a “lot by itself.” Petitioners request variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §§ 400.1 and 303.1 to permit a replacement detached accessory structure (garage) with a front yard setback of 25 ft. in lieu of the required front yard average of 40 ft. A site plan was marked as Petitioners’ Exhibit No. 1.

Barry Jackson and Emily Kirk appeared in support of the Petition. No Protestants or interested citizens attended the hearing. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were submitted by 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 approximately 20,000 square feet and is zoned DR 5.5. Petitioners in 2012 purchased the property at 2117 Oak Road, which is improved with a single-family dwelling constructed in 1946. The existing dwelling is situated on Lot 1080 as shown on the plat of Lodge Forest Manor. Petitioners also acquired at the same time an adjoining lot known as Lot 1079 on

the Lodge Forest Manor plat. This lot is improved with a detached building formerly used as a garage, although there is no dwelling on the lot. Petitioners propose to raze the existing garage and in its place construct a new garage that would accommodate two vehicles.

Given the facts as stated above and the testimony at the hearing, I believe Lots 1079 and 1080 have merged for zoning purposes. Petitioners explained they purchased their home from the daughter of the original owners, who was raised in the home and now resides just across the street. The seller explained the garage on Lot 1079 has existed in its present location for many years, and was always used by the owners of 2117 Oak Road and in conjunction with that property. As such, the lots have merged pursuant to Friends of the Ridge v. BGE, 352 Md. 645 (1999).

The most immediate consequence of this finding is that Petitioners do not require the special hearing relief sought in the petition, since the garage is in fact not located on a “lot by itself.” While Petitioners do need a variance, it is not for a front setback as sought in the Petition. Instead, since the lots have merged the proposed garage would be accessory to the principal dwelling at 2117 Oak Road and a variance under B.C.Z.R. 400.1 is required to construct the building in the front yard.

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).

Petitioners have met this test. The property is narrow and deep, and is bordered by a parcel of land subject to flood zone restrictions. As such it is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to rebuild the

existing garage, which has fallen into disrepair. Finally, I believe 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 support of Petitioners' neighbors, all of whom signed a petition which was marked as Exhibit No. 4.

I am mindful the DOP does not support the requested front yard location for the garage. That agency believed the front averaged setback should be observed "to preserve the relationship of structures to street line now established on Oak Road." But as noted above, for more than 50 years the garage has in fact been located in the front yard of the dwelling, and thus I do not believe rebuilding the garage in this location would disturb in any way the relationship between structures and the street line. In fact, even if I was not inclined to grant the variance for the front yard location (which is a very common zoning request) I believe Petitioners would be entitled to rebuild the garage in its present location pursuant to B.C.Z.R. §104 pertaining to nonconforming uses and structures.

THEREFORE, IT IS ORDERED, this 29<sup>th</sup> day of **June, 2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("B.C.Z.R) §§ 400.1 and 303.1 to permit a replacement detached accessory structure (garage) with a front yard setback of 25 ft. in lieu of the required front yard average of 40 ft., be and is hereby DISMISSED as unnecessary.

IT IS FURTHER ORDERED that the petition for special hearing to permit an accessory structure on a "lot by itself," be and is hereby DISMISSED as unnecessary.

IT IS FURTHER ORDERED that the petition for variance to construct an accessory building (garage) in the front and side yard of the principal dwelling in lieu of the required rear yard location, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Prior to issuance of permits Petitioners must comply with Critical Area and flood protection regulations.
3. The proposed garage shall not contain living quarters or kitchen/bathroom facilities and shall not be used for commercial purposes.

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

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB/sln