

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(3643 Bay Drive)	*	OFFICE OF
15 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
Gary C. & Kathleen Loraditch		
<i>Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2016-0203-SPHA

* * * * *

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 Gary C. and Kathleen Loraditch, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), as follows: (1) a use permit for an accessory apartment without separate utility meters or water and sewerage services; and (2) a request for confirmation that the height variance for the principal structure in Case No. 2012-0300-A is applicable to the principal structure being proposed herein. In addition, a Petition for Variance seeks the following: (1) to permit an accessory building with a height of 30 ft. in lieu of the maximum of 15 ft.; and (2) to permit an accessory apartment which is 1,260 sq. ft. in lieu of the maximum of 1,200 sq. ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was Gary and Kathleen Loraditch, legal owners. Lawrence E. Schmidt, Esq. represented the Petitioners. Alan Robertson, on behalf of the Bowley’s Quarters Community Association, opposed the requests. 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) and the Bureau of Development Plans Review (DPR).

SPECIAL HEARING

The subject property is 1.6 acres and zoned RC 5. The waterfront property is unimproved, and Petitioners propose to construct a single-family dwelling (SFD) and an accessory structure on the site. The accessory structure would contain a 3 car garage on the first floor, and the second floor would be an accessory apartment. Petitioners explained that their elderly mother would live in the apartment, which would be accessed by stairs from the interior of the garage. Section 400.3 of the B.C.Z.R. permits accessory apartments subject to certain conditions which must be set forth in a Declaration of Understanding.

The most important condition, at least for zoning purposes, is the structure is not considered a second dwelling on the property and can only be occupied by individuals related by blood or marriage to the owners of the principal dwelling. The proposed structure would be designed by an architect, and plans were submitted (Petitioners' Exhibit 11) which reveal the garage/apartment would be compatible with the scale and appearance of the proposed single-family dwelling. As such, the petition for special hearing will be granted.

The petition contained a second special hearing request, which seeks confirmation that the height variance granted in Case No. 2012-0300-A is applicable to the proposed SFD. The relief in that case permitted a dwelling height of 44 ft. in lieu of the maximum 35 ft. in the RC5 zone. The home proposed by Petitioner in the 2012 case was never constructed, but the plan in this case (Exhibit 9) reflects the SFD will be 42 ft. in height. In accordance with general principles of law concerning variances, the relief granted in 2012 has not lapsed and is applicable to the dwelling proposed herein by Petitioners.

VARIANCES

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 250 ft. wide, which is much larger than nearly all of the surrounding lots. As such, it is unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be unable to construct the proposed garage. 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.

THEREFORE, IT IS ORDERED this 17th day of **May, 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.”) as follows: (1) a use permit for an accessory apartment without separate utility meters or water and sewerage services; and (2) a request for confirmation that the height variance for the principal structure in Case No. 2012-0300-A is applicable to the principal structure being proposed herein, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance which seeks the following: (1) to permit an accessory building with a height of 30 ft. in lieu of the maximum of 15 ft.; and (2) to permit an accessory apartment which is 1,260 sq. ft. in lieu of the maximum of 1,200 sq. ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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. Petitioners must prior to issuance of permits comply with the Critical Area Regulations.
3. Petitioners must submit for approval by Baltimore County a landscape plan for the site.
4. Prior to issuance of permits Petitioners must comply with the RC5 Performance Standards, as determined by the DOP.
5. Petitioners must execute and have notarized a Declaration of Understanding (in a format approved by Baltimore County) concerning the accessory apartment, which must be filed in the land records in the Circuit Court for Baltimore County.

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