

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(414 Riverside Road)	*	OFFICE OF
15 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
Jerry W. Birchfield, Jr.		
<i>Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2017-0041-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 Jerry W. Birchfield, Jr., legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to permit an accessory structure with a foot print greater than the foot print of the principal building (single-family dwelling). In addition, a Petition for Variance seeks to permit a garage/pole barn in the rear yard of an existing single-family dwelling with a height of 15 ft. 11 in. in lieu of the required 15 ft. 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 Jerry W. Birchfield, Jr. 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) and the Department of Environmental Protection and Sustainability (DEPS). Conditions will be included in the final Order to address the concerns raised by these agencies.

The subject property is approximately .27 acres in size and is zoned DR-5.5. The property is improved with a modest single-family dwelling (1,170 sq. ft.) constructed in 1950. There is

also a shed on the property, which Petitioner plans to raze. In its place Petitioner proposes to construct a larger garage that will enable him to store his boat, trailer and other belongings.

SPECIAL HEARING

The special hearing request concerns the footprint of the garage, which would be slightly larger than that of the single-family dwelling. As noted, the existing dwelling is somewhat small, with a footprint of 35' x 26'. The site plan and aerial photo in the file reveal both adjoining neighbors also have fairly large accessory buildings in their rear yards. The proposed structure would be located at the rear of the lot, over 150 ft. from Riverside Road. In these circumstances I do not believe the garage will have any detrimental impact upon the community and the petition for special hearing will be granted.

VARIANCE

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 property has an irregular shape and is therefore unique. Petitioner would experience practical difficulty if the regulations were strictly interpreted because he would be unable to construct the proposed garage to store his boat and other household items. Finally, as demonstrated by the lack of any opposition, I do not believe granting the requests would have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this 3rd day of October, **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) to permit an accessory structure with a foot print greater than the foot print of the principal building (single-family dwelling), be and is hereby GRANTED.

IT IS FURTHER ORDERED the petition for variance to permit a garage/pole barn in the rear yard of an existing single-family dwelling with a height of 15 ft. 11 in. in lieu of the required 15 ft., 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 his 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. Petitioner must comply with the ZAC comment from the Department of Environmental Protection and Sustainability (DEPS), a copy of which is attached hereto and made a part hereof.
3. Petitioner or subsequent owners shall not convert the garage into a dwelling unit or apartment. The garage shall not contain any sleeping quarters, living area, and kitchen or bathroom facilities.
4. The garage 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.

JEB/sln

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County