

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(2125 Benson Mill Road)	*	OFFICE OF
5 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Christopher & Taylor Shoffner		
<i>Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2016-0321-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 Christopher and Taylor Shoffner, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit the amendment of restriction #2 placed on the barn/garage approved in Case No. 2016-0248-A, to allow a bathroom in the garage for convenience only. A Petition for Variance seeks: (1) to permit an approved accessory building (northern ½ of barn/garage) with a total height of 18 ft.; and (2) to permit an approved accessory building (southern ½ of barn/garage) with a total height of 23 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests were Christopher and Taylor Shoffner and professional surveyor Bruce Doak. 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 Environmental Protection and Sustainability (DEPS) and the Department of Planning (DOP). DEPS indicated the property is served by well and septic system; as such

that agency must review all building permit applications. The DOP opposed the request, and that agency's concerns are discussed below.

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 has irregular dimensions (i.e., it is narrow and deep) and is therefore unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be unable to construct the proposed accessory building. The owner explained he enjoys working on antique vehicles, but due to his age he requires a vehicle lift to be installed since he can no longer lay on the ground to work on his cars. He testified he works on only his personal vehicles and has no intention of operating a service garage or performing repairs on vehicles owned by third parties.

To accommodate the vehicle lift the roof line in the garage must be raised, which necessitated the height variance request. I believe 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. The site is rural and sparsely populated such that the height of the accessory building will not negatively impact the community.

SPECIAL HEARING

The request for special hearing seeks to amend a restriction contained in a recent order granting administrative variance relief to permit a garage at the property which is larger than

the existing single-family dwelling. That Order prohibited - - among other things - - “bathroom facilities” in the detached garage. Petitioner explained he has a medical condition which requires him to use the bathroom upwards of 12 times a day. As such, he would like to have a bathroom in the proposed garage. He testified the garage will not have kitchen facilities or living quarters of any kind.

In these circumstances the special hearing request seems reasonable and will be granted. As explained at the hearing, granting the petition will strike from the order the prohibition (as a zoning matter) on “bathroom facilities.” But whether or not a bathroom is allowed depends upon the review by DEPS, which must determine whether adequate well and/or septic facilities exist or can be accommodated on site. A condition to that effect is included in the Order below.

The DOP indicated the site area is “less than the 3 acres necessary to meet the definition of a farm and thus does not support the additional height required of an agricultural building.” While the site plan indeed shows an “area” of 2.14 acres, the SDAT record lists the “property land area” as 5.14 acres, which is a sufficient amount of land to constitute a “farm” under the Regulations. The SDAT record also indicates the “use” of the property is “agricultural,” though it is Petitioners’ “principal residence.”

Whether or not the property qualifies as a “farm” or an “agricultural” use may well be an important question in terms of real property taxation, but I do not believe it is an issue which must be decided in this zoning case. The relief granted herein is similar to that granted to owners of single-family dwellings in numerous other variance and administrative variance cases, wherein the height of an accessory building has been permitted to exceed the 15 feet limitation contained in B.C.Z.R. §400.3. The relief granted below is not predicated upon the property qualifying as a farm or agricultural use, and no finding is made on that issue.

THEREFORE, IT IS ORDERED this **8th** day of **September, 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 amend and strike the words “or bathroom” found in restriction #2 on page 3 of the Order in Case No. 2016-0248-A, be and is hereby GRANTED.

IT IS FURTHER ORDERED that all other terms and conditions of the Order in Case No. 2016-0248-A shall continue in full force and effect.

IT IS FURTHER ORDERED the petition for variance: (1) to permit an approved accessory building (northern ½ of barn/garage) with a total height of 18 ft.; and (2) to permit an approved accessory building (southern ½ of barn/garage) with a total height of 23 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. Prior to issuance of a building permit for the proposed barn/garage, Petitioner must obtain approval from the Ground Water Management section of DEPS.
3. The barn/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