

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
E side of Oakleigh Road; 212 feet S of	*	DEPUTY ZONING
the c/l of Clearwood Road		
9 th Election District	*	COMMISSIONER
5 th Councilmanic District		
(8225 Oakleigh Road)	*	FOR BALTIMORE COUNTY
John M. Pearce	*	
<i>Petitioner</i>		Case No. 2011-0112-SPHA
	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by John M. Pearce, the legal property owner. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory structure (garage) on a lot without a principal structure. Petitioner is also requesting Variance relief from Section 400.3 of the B.C.Z.R to permit an accessory structure (garage) with a height of 19 feet in lieu of the maximum permitted 15 feet. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested relief was Petitioner John Pearce. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is rectangular in shape, contains 0.50 acre or 19,965 square feet, more or less, and is located on the east side of Oakleigh Road, just south of Clearwood Road in the Parkville area of Baltimore Count. The property is improved with a 1½-story single-family dwelling and a driveway that runs along the southern boundary of the property. At this juncture, Petitioner desires to construct a garage at the end of

the driveway in the rear yard with a height of 19 feet in order to store his fishing boat; hence the request for variance relief. Photographs of the boat in the driveway on a trailer were marked and accepted into evidence as Petitioner's Exhibits 4A through 4F. Petitioner also seeks special hearing relief because, although the property essentially consists of a "double lot," the existing home is located entirely on Lot 69 of the Hillendale Farms subdivision, with no improvements on what is known as Lot 70, other than the aforementioned driveway. As illustrated on the Real Property Data Search that was marked and accepted into evidence as Petitioner's Exhibit 5, the legal description of the property is shown as Lots 69 and 70 and they are both under one tax ID number; however, because there is no principal structure on Lot 70, the Zoning Review Office requires that special hearing relief be obtained in order to now place a structure there. As to the variance relief, Petitioner believes the size of his lot as compared with the "single lots" in the neighborhood sets his property apart and contributes to the uniqueness of the property. Petitioner also notes that the need for the increased height is driven only by his desire to store his boat on its trailer, thus requiring a higher garage door height, and is not so as to put a second story on the garage or to use it for commercial purposes.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

After due consideration of the testimony and evidence presented, I am persuaded to grant the relief requested. As to the variance request, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. Finally, I find the variance can be granted in strict

harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. Although the Office of Planning did not make any recommendations related to the garage height and usage, I will impose conditions that the accessory structure not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or bathroom facilities, and not be used for commercial purposes.

As to the special hearing, I am easily persuaded to grant this relief as well. Although the two lots are considered as one property in the tax records, there are no structural improvements on Lot 70. I am persuaded to permit the requested garage on Lot 70 notwithstanding that there is no principal structure thereon because it has essentially been part of Lot 69 at all times. While there is no evidence of any “merger” of the two lots, Petitioner is advised that with the construction of an accessory structure on Lot 70, it will in all practical and legal respects now be merged with Lot 69, precluding a potential subdivision and development of Lot 70 in the future. During the hearing, Petitioner indicated he understood this situation and has never considered the lots separate in any event.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner’s special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 8th day of December, 2010 that Petitioner’s Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory structure (garage) on a lot without a principal structure be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's Variance request from Section 400.3 of the B.C.Z.R to permit an accessory structure (garage) with a height of 19 feet in lieu of the maximum permitted 15 feet be and is hereby **GRANTED**.

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that it may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The accessory structure shall not be used for commercial purposes.

Advisory – Petitioner is advised that in being granted special hearing relief and placing an accessory structure on Lot 70 for the benefit of Lot 69, those lots are essentially “merged” for zoning and potential subdivision and development purposes. Thus, Petitioner may be precluded from any further development of Lot 70 as a lot for a separate single-family dwelling. *See, Friends of the Ridge v. BG&E*, 352 Md. 645 (1999).

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

____SIGNED_____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz