

**IN RE: PETITION FOR SPECIAL HEARING *
AND VARIANCE**

W/Side of Ellenham Avenue, 240' S of the *
c/line of Joppa Road
9th Election District *
2nd Councilmanic District
(7924 Ellenham Avenue) *

Eric Tietz, Nicole Tietz and Margaret Jones *
Petitioners

BEFORE THE

OFFICE OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY

CASE NO. 2011-0370-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Eric Tietz, Nicole Tietz and Margaret Jones, legal owners of the subject property. The Petition for Special Hearing was filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve the construction of a detached structure “with all facilities of convenience.” Variance relief is being requested from Section 400.1 of the B.C.Z.R. to permit a proposed detached accessory structure (studio) to be located on the side yard of the principal dwelling in lieu of the required rear. The subject property and requested relief are more fully described on the site plan, which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing on this Petition was Eric and Nicole Tietz and Margaret Jones, legal owners of the subject property, and Mark Cavallaro, President of Marcus Paul Building and Development Group, LLC, who is assisting the Petitioners with the permitting process. Several citizens attended the hearing: Mr. and Mrs. Ford are the immediate neighbors of Petitioners, and Ms. Mountcastle is President of the Ruxton-Riderwood-Lake Roland Area Improvement Association (RRLRAIA). Both the Fords and Ms. Mountcastle objected to the relief sought in the Petitions, and as depicted on Exhibit 1, but as discussed below, an alternative proposal discussed at the hearing has for the most part ameliorated their concerns. The file

reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

The Zoning Advisory Committee (ZAC) comments were made a part of the record of this case. Comments were received from the Office of Planning on July 26, 2011, as follows:

The Office of Planning does not oppose the requested special hearing and variance provided:

1. The accessory structure is not used for either living quarters or commercial purposes
2. The accessory building is constructed in accordance with the submitted elevation drawings.

No other Baltimore County agency submitted any substantive comments and/or concerns.

Testimony and evidence presented demonstrated that Ms. Jones is the mother of Nicole Tietz, and she is also listed on the deed and State Department of Assessments and Taxation (SDAT) records as an owner of the property. Petitioners stated that they were required to raze an aging garage when they purchased their home, and desire to construct an “in-law apartment” for Ms. Jones on basically the same “footprint.” The structure would be 22' x 22'. The Fords objected to the placement of the proposed “apartment,” which was essentially on the property boundary line at the northwest corner of the site. They feared it would look too large and imposing, and would also result in a lack of privacy.

A discussion then ensued, and I suggested Petitioners could incorporate their unimproved (and undersized) lot into the plan. The lot adjoins the main parcel on which their home is located, to the north. I explained that by doing so, they would be in essence “merging” the lots, and would therefore be unable to seek further development or density with respect to that parcel. The Petitioners were receptive to that idea, and the hearing was then adjourned to allow the neighbors and the community association to consider the new proposal.

The Fords have now indicated they support the new proposal, and Ms. Mountcastle has indicated her association would remain “neutral.” The alternate proposal (marked as Petitioners’ Exhibit 2) reflects the accessory apartment will “straddle” the lot line between Parcels 1 and 2 (both owned by Petitioners), and under settled Maryland law those lots are therefore merged. One additional (and significant) development has occurred in the interim: enactment of Baltimore County Council Bill 49-11, concerning “accessory apartments.” The bill is expressly retroactive to August 1, 2010, and I therefore find Petitioners can avail themselves of the benefits of that ordinance, though the relief granted herein shall be subject to the same conditions enumerated in Bill 49-11.

I find that the special hearing relief should be granted as the approval of this request will not adversely impact the health, safety or welfare of the neighborhood. The adjoining neighbors support the proposal, and Ms. Jones is not only an “in-law” but also an owner of the property.

As to the variance relief (to allow the accessory apartment to be located in the side yard), I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners. The Petitioners are essentially seeking to replace the dilapidated garage they razed when they purchased the home, and that structure was also on the side yard of the principal dwelling. In addition, as shown on Petitioners’ Exhibit 1, the principal dwelling essentially sits on the western property line boundary, and as such there is no “rear” yard in which to locate an accessory structure.

I further find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety, and general welfare. Thus, I find that the variance can be granted in such a manner as to

meet the requirements of Section 307 of the B.C.Z.R, as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the subject property and public hearing on this Petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 13th day of September, 2011, that the Petitioners' request for Special Hearing relief, filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to approve the construction of a detached structure ("accessory apartment"), as depicted on Petitioners' Exhibit 2, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Variance request pursuant to Section 400.1 of the B.C.Z.R. to permit a proposed detached accessory apartment to be located on the side yard of the principal dwelling in lieu of the required rear, be and is hereby GRANTED, subject to the following:

1. Petitioners must file with the Department of Permits, Approvals and Inspections a Declaration of Understanding, which shall be recorded in the land records of Baltimore County.
2. The accessory apartment shall be utilized by only Margaret Jones or other immediate family members related to Petitioners by blood, marriage or adoption.
3. Petitioners must obtain a Use Permit and comply with the other procedural requirements set forth in Baltimore County Council Bill 49-11.
4. The accessory apartment to be located in the side yard of Petitioners' principal dwelling must comply with all setback requirements set forth in the B.C.Z.R.
5. Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day Appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw