

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
S/S of Osage Road, 353' E from its inter-	*	OFFICE OF
section with the c/l of Gateview Road		
8 th Election District	*	ADMINISTRATIVE HEARINGS
3 rd Council District	*	FOR BALTIMORE COUNTY
(424 Osage Road)	*	
 Salvatore and Karen DiFatta		
<i>Petitioners</i>	*	CASE NO. 2012-0049-SPHA

* * * * *

ORDER AND OPINION

This matter comes before the Administrative Law Judge as Petitions for Special Hearing and Variance filed by the legal owners of the property, Salvatore and Karen DiFatta. The Petitioners are requesting Special Hearing relief under Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory building (replacement garage) to be located on a separate lot from the principal use or structure served. Petitioners are also requesting Variance relief pursuant to Sections 400.1 and 400.3 of the B.C.Z.R. to permit an accessory building (replacement garage) to be located in the front yard with a height of 26 feet in lieu of the required rear yard and 15 feet respectively. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing held for this case were Petitioners Salvatore and Karen DiFatta and David Billingsley with Central Drafting & Design, Inc., land surveyor who prepared the site plan for the Petitioners. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons present.

The ZAC comments were received and made a part of the file. Comments were received from the Department of Environmental Protection and Sustainability dated September 13, 2011

which indicate that any further building permits for this site will require review by Groundwater Management.

David Billingsley testified on behalf of the Petitioners. He described the property as being 2.829 acres zoned DR 2. Petitioners own several contiguous lots and have built their home on the lot adjacent to the subject site. He described the old two story barn and garage that existed on the site since the 1950s. He stated that it was deteriorated by age and weather to such an extent that it was dangerous and unusable. Petitioners razed the old structure and placed the new garage on the footprint and foundation of the old structure. He noted that the new barn/garage is 26 feet high, compared to 29 feet height of the original and is two feet shorter.

Unfortunately, the witness related that the Petitioners had not obtained the required permits to either raze the old structure or replace it with the new one. Accordingly, although the new replacement building was almost completed, a stop work order was issued and all activity ceased.

The witness proffered on behalf of the Petitioners that the new structure would only be used to store his motor vehicles and to provide space for a woodshop for various personal projects. There is public water and sewer at the site; there is a bathroom in the new structure, but no kitchen facilities whatsoever. No one will live in the new building. The façade, however, will resemble a residential structure so as to retain the aesthetic qualities of the area, and in any event, the new garage will be well screened from any neighbors.

Mr. Billingsley addressed the variance requirement. He pointed to the shape and contour of the proposed site of the garage; taken with its location as being wedged between Osage Road (the access to the other lots in the area) and the adjacent lot on which Plaintiffs' house is located, as characteristics unique to the subject site. Without the requested variances, he stated, the various ladders, tools, and lumber for the shop work could not be stored along with the motor vehicles,

and there would not be sufficient height for tools and lumber.

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.

Thus, the variance requested meets 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 property and public hearing on these Petitions held and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, this ____**17**____ day of November, 2011 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief under Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory building (replacement garage) to be located on a separate lot from the principal use or structure served, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 400.1 and 400.3 of the B.C.Z.R. permit an accessory building (replacement garage) to be located in the front yard with a height of 26 feet in lieu of the required rear yard and 15 feet respectively, be and is hereby GRANTED.

The relief granted herein shall be conditioned upon:

1. The Petitioners may apply for their building permit and may be granted same upon receipt of this Order, however the 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 will be required to return and be responsible for returning said property to its original condition.
2. Any further building permits for this site will require review by the Groundwater Management Section of the Department of Environmental Protection and Sustainability.
3. The accessory building (replacement garage) may not be used for residential purposes whatsoever.

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

Signed _____
LAWRENCE M. STAHL
Managing Administrative Law Judge for
Baltimore County

LMS:pz