

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
W side Deer Park Road, 740 feet	*	OFFICE OF
NW of the c/line Dolfield Road		
(4800 Deer Park Road)	*	ADMINISTRATIVE HEARINGS
2 nd Election District		
4 th Council District	*	BALTIMORE COUNTY
Carol A. Reed		
<i>Petitioner</i>	*	Case No. 2012-0110-SPHA

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Variance filed by the owner of the subject property, Carol A. Reed. The Petitioner requests a special hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory apartment in an accessory building situated on the same lot as a principle single-family detached dwelling with all occupants of a single-family non-conforming barn/garage structure in existence before the zoning regulations. In addition, variance relief is requested from Section 400.3 of the B.C.Z.R. to permit an existing accessory building with a height of 22 feet in lieu of the maximum allowed 15 feet. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request were Carol A. Reed, property owner, and Donna M.B. King, Esquire. There were no Protestants or other interested persons present. 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 received and are made a part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability dated December 13, 2011, and offers the following comments:

1. Agricultural Preservation: Oppose. The BCZR 1A03.4.B5. specifically provides that only in the case of a tenant dwelling can there be more than one dwelling unit on a lot in an RC-4 zone. The RC-4 zone's purpose is to protect the water quality of the reservoir and to accomplish this by limiting the amount and intensity of use of a property. This request conflicts with that purpose and is specifically prohibited by the BCZR.
2. Groundwater Management: The property appears to have two dwelling units onsite that are served by one well and sewage disposal system. The well is a drilled well and is in good condition. The sewage disposal system consists of a 1,500 gallon concrete septic tank (with manhole riser to grade) and two seepage pits that were installed in 1979. The sewage levels in both pits were observed and found to be less than 50% of capacity, consequently the system appears to be functioning properly. Satisfactory soil percolation tests were conducted on the property on September 17, 1979 and a 10,000 sq. ft. sewage disposal reserve area was established at that time. There is ample room on the property to allow for repair of the septic system, consequently this section has no objections or comments regarding the proposal.

Testimony and evidence offered revealed that the subject property consists of 2.764 acres, more or less, and is zoned RC 4. The property is located on the west side of Deer Park Road in the Soldiers' Delight area of Baltimore County. The property is improved with a two story frame single family dwelling and a detached two story frame garage. The Petitioner, Carol Reed, has filed a special hearing request to approve an accessory apartment which is located on the first level of the two story frame garage. The Baltimore County Council recently passed Bill No. 49-11 which allows the accessory apartment to exist within the first floor of the two story garage as accessory to the principle dwelling on the subject property. The special hearing relief is necessary in that the apartment itself is located in a detached accessory building and not within the principle single family dwelling. Section 400.4.B.1 of the zoning regulations requires a hearing before this Administrative Law Judge for approval of this apartment. This law also specifically allows these

types of apartment dwellings to exist even in the RC 4 zone. The comment issued by the Department of Environmental Protection and Sustainability (DEPS) is wrong in that respect. This new law does allow accessory apartments to exist in the RC 4 zoning classification.

The testimony and evidence offered by the Applicant at the hearing demonstrated that the apartment in question meets all of the requirements of Section 400.4 relative to size, ownership, family relationship and all other matters applicable to the approval of this accessory apartment. Ms. Reed went on further to state that she will occupy the first floor apartment contained within the detached garage while her daughter and son-in-law reside within the single family dwelling. This arrangement is particularly convenient for the Petitioner in that she cares for and watches over her four grandchildren who also reside with her daughter and son-in-law, and then in turn look after her well being while she resides within the accessory apartment. This is exactly the situation that the County Council had in mind when approving this accessory apartment legislation this year.

Testimony regarding the accessory garage demonstrated that the second floor area of the garage which at one time was an apartment, has been converted into storage space and an exercise room. The members of the family use the second story of the garage as an exercise and gymnasium room and it in no way will be utilized as a second apartment. Only the first floor of the garage shall be utilized as an apartment and must be lived in by Carol A. Reed, the Petitioner herein.

An analysis of the property's septic system was undertaken by the Department of Environmental Protection and Sustainability. That Office issued a written comment to this file indicating that the septic system is more than adequate to accommodate this accessory apartment and that there is ample additional land for any additional septic system which might be needed in the future. That comment was dated December 13, 2011, and was signed by J. Robert Powell from the Groundwater Management Division of DEPS.

In addition to the special hearing relief to approve the accessory apartment, a variance request has also been made to allow the garage to exist at a height of 22 feet in lieu of the maximum permitted 15 feet. The garage in question has always existed on the property and was constructed at a height of 22 feet. The Applicant does not intend to increase the height of the garage at all at this time. I see no reason why the garage should not be permitted to remain at the 22 feet height as it has existed for many years.

While no one appeared in opposition to the request, it should be noted that a letter of opposition was sent to this Office from James E. and Lisa M. Stevens, who reside at 4808 Deer Park Road. Mr. Stevens expressed concerns over the adequacy of the existing septic system for the house and apartment, and was also concerned that the Applicant may be attempting to utilize the second story of the garage as a second apartment. None of the testimony offered at the hearing indicated that the second floor was anything more than an exercise room and family room. In fact, the testimony offered at the hearing was that it will not be used as a second apartment. Furthermore, the written comment from the Department of Environmental Protection and Sustainability indicated that the septic system is perfectly capable of handling this additional apartment. The use of this apartment in the garage at this time shall be limited to Carol A. Reed and shall not be passed on or transferred to any other occupant or tenant in the future. Once Ms. Reed ceases occupying the apartment within this garage, the apartment use shall cease and terminate. The purpose of this special hearing and variance approval is to allow this family relationship to continue to exist on this property where Ms. Reed can reside in the apartment within the garage while her daughter, son-in-law and four grandchildren continue to reside in the principle dwelling.

As to the special hearing relief, I find that the size, location and purpose of the accessory apartment conforms with Section 502.1 of the B.C.Z.R., and will not adversely affect the surrounding and neighboring properties. Accordingly, the special hearing shall be granted.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. 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 the granting of the relief as set forth herein can be accomplished without injury to the public health, safety, and general welfare. Therefore, in all manner and form, I find that the variance can be granted in accordance with the requirements of Section 307 of the B.C.Z.R. as articulated 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 by this Administrative Law Judge for Baltimore County this 19th day of January, 2012 that the Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory apartment in an accessory building situated on the same lot as a principle single-family detached dwelling with all occupants of a single-family non-conforming barn/garage structure in existence before the zoning regulations, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Variance seeking relief from Section 400.3 of the B.C.Z.R. to permit an existing accessory building with a height of 22 feet in lieu of the maximum allowed 15 feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The accessory apartment approved herein shall only be occupied by Carol Reed, the owner of the property. Should Ms. Reed no longer occupy the accessory apartment,

then the approval granted herein shall expire and the apartment area shall be converted to normal residential garage use.

2. There shall be no second apartment dwelling on the second floor of the garage building. That area shall be for storage or exercise use and shall not contain any cooking or bathing facilities.
3. The Petitioner may apply for her building permit and may be granted same upon receipt of this Order, however the Petitioner is hereby made aware that proceeding at this time is at her 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 Petitioner will be required to return and be responsible for returning said property to its original condition.
4. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

Signed
TIMOTHY M. KOTROCO
Zoning Commissioner
for Baltimore County

TMK:pz