

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
NE side of Glenhurst Road, 132' SE	*	OFFICE OF
of Cove Road		
(3914 Glenhurst Road)	*	ADMINISTRATIVE HEARINGS
15 th Election District		
7 th Council District	*	FOR BALTIMORE COUNTY
Ronald C. and Denise M. Kuhar	*	CASE NO. 2012-0276-SPHA
Petitioners		

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Hearing and Variance filed by the legal owners of the subject property, Ronald C. and Denise M. Kuhar. Resolution 38-12 concerning the public disclosure of Doris Kuhar, an employee of the Baltimore County Council, was approved at the County Council meeting held on May 7, 2012. The Petitioners are requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), seeking approval of an accessory apartment in an existing garage situated on same lot as principal single-family detached dwelling; all occupants to be limited to family members. The Petitioners are also seeking variance relief from Section 400.3 of the B.C.Z.R., to permit an existing accessory building with height of 16' +/- in lieu of the permitted 15'. 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 public hearing held for this case were Petitioners Ronald C. and Denise M. Kuhar and Albert and Doris Kuhar. 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 in attendance, and the file does not contain any

letters of protest or objection.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received from the Department of Environmental Protection and Sustainability (DEPS) on June 8, 2012 which state that the Petitioner must comply with certain critical areas regulations, as set forth at B.C.Z.R. § 500.14.

Testimony and evidence revealed that the subject property is 10,455 square feet and zoned DR 5.5. The detached garage in question was constructed in 1948, and the Petitioner's parents have lived in that structure (i.e., accessory apartment) for 15 years. In light of the enactment of Bill 49-11 (concerning accessory apartments) the Petitioners sought variance and special hearing relief to "legitimize" the structure.

Based upon the testimony and evidence presented, I am persuaded to grant the request for 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. Indeed, the garage was constructed over 60 years ago at its present height. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioners have met this test.

Finally, I find that 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. This is amply demonstrated by the support of Petitioners' neighbors (Exhibit 2), as well as the absence of comments by County reviewing agencies.

Under the B.C.Z.R., accessory apartments are permitted provided they satisfy the standards set forth in B.C.Z.R. § 502.1, governing special exception relief. The Petition in this case satisfies those standards. Indeed, the Petitioners have used the garage as an "accessory apartment" for the past 15 years, without complaint. In addition, their adjacent neighbors have all indicated they are supportive of their request. There is simply no evidence to suggest that this use would be detrimental to the community's health, safety and welfare. Accordingly, the special hearing relief will be granted.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 25 day of June, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), seeking approval of an accessory apartment in an existing garage situated on same lot as principal single-family detached dwelling; all occupants to be limited to family members, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 400.3 of the B.C.Z.R., to permit an existing accessory building with height of 16' +/- in lieu of the permitted 15', be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

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. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability dated June 8, 2012, a copy of which is attached hereto and made a part hereof.
3. The in-law apartment use is subject to Bill 49-11 and all of the restrictions and conditions therein.

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:pz