

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(1236 E. Riverside Avenue)	*	OFFICE OF
15 th Election District		
6 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
Charles P. and Yvonne M. Roe	*	FOR BALTIMORE COUNTY
Petitioners	*	
	*	Case No. 2013-0004-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 Charles P. and Yvonne M. Roe, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to determine whether or not the Administrative Law Judge should approve a second story over an existing detached garage in the rear yard with a bathroom, sink, commode, and shower. In addition, a Petition for Variance was filed pursuant to § 400.3 of the B.C.Z.R., to approve a second story above an existing detached garage in the rear yard with a combined height total of 21' in lieu of the maximum allowed 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 4.

Appearing at the public hearing in support of the requests was Charles P. and Yvonne M. Roe, and Timothy L. LaBon. 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 in attendance, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Environmental

Protection and Sustainability (DEPS) on September 21, 2012, indicating that Petitioners were obliged to comply with certain Critical Area regulations, as set forth in B.C.Z.R. § 500.14.

The subject property is 20,000 square feet and is zoned DR 3.5. The Petitioners acquired the property 20 years ago, and in 2001 constructed an attractive new single-family dwelling on the site, pursuant to relief granted in a former zoning case, Case No. 01-292-A. Since that time, the Petitioners have had two (2) children, and they now want to construct the proposed garage addition to use as a family game room and play space for the kids. The Petitioners have engaged a builder, and submitted a rendering of the proposed addition (Exhibit 2) as well as a set of construction drawings and blueprints (Exhibit 3). The proposed addition is attractive and professionally designed, and the Petitioners indicated that the exterior of the garage will complement and be similar in appearance to the existing single-family dwelling.

With regard to the special hearing relief, there was no evidence presented that the proposed addition to the garage would negatively impact the neighborhood. The Petitioners indicated that their neighbors are supportive of their request, and they testified that the garage will not be used as overnight living quarters. As such, the special hearing relief will be granted.

Based upon the testimony and evidence presented, I will also grant the request for variance relief. 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. As former Zoning Commissioner Schmidt noted in 2001, the Petitioners' lot is narrow and deep, and is therefore unique for zoning purposes. I also find that

strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship, given that Petitioners would be unable to construct the garage as planned. 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 demonstrated by the absence of opposition from the community and County reviewing agencies.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioners' Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED this 19th day of November, 2012, by this Administrative Law Judge, that Petitioners' request for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to approve a second story over an existing detached garage in the rear yard with a bathroom, sink, commode, and shower, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' Variance request from § 400.3 of the B.C.Z.R., to approve a second story above an existing detached garage in the rear yard with a combined height total of 21' in lieu of the maximum allowed 15', be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for their appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. No commercial activity in garage.
3. No overnight habitation.

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

JEB/dlw

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County