

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(3802 Chestnut Road)	*	OFFICE OF
15 th Election District		
6 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
Robert A., Sr. & Robert A., Jr. Sersen		
Petitioners	*	FOR BALTIMORE COUNTY
	*	Case No. 2013-0150-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 Robert A., Sr. & Robert A., Jr. Sersen, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), (1) To amend the previous site plan in zoning Case No. 1973-0026-A by removing all structures and accessory structures at 3800, 3802 and 3802A Chestnut Road; and (2) To allow a new structure and new accessory structures (2 garages) with a new address at 3802 Chestnut Road. A petition for variance seeks the following relief: (1) To allow the new structure 38 ft. +/- for both side yard setbacks in lieu of the required 50 ft. side yard setback and 34 ft. +/- for new decks for both side yard setbacks in lieu of the required 37.5 ft.; (2) To allow the new accessory structures 11 ft. +/- for both side yard setbacks in lieu of the required 50 ft. side yard setback; and (3) To allow in a RC 5 zone an undersize lot of 1.214 acres in lieu of the required 1.5 acres. 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 in support of the requests was Robert A. Sersen, Sr. and William N. Bafitis, P.E. from Bafitis & Associates, Inc, the firm that prepared the site plan and who is assisting the Petitioners through the permitting process. 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. In fact, Petitioner presented a letter dated January 19, 2013 with the signatures of six adjacent neighbors, all of whom indicated their support for the project.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The Department of Environmental Protection and Sustainability (DEPS) indicated that Petitioners are obliged to satisfy certain Chesapeake Bay Critical Area (CBCA) regulations, and the Department of Planning (DOP) supports the project and indicated the plan satisfied the RC-5 performance standards set forth in the B.C.Z.R.

The subject property is 52,878 square feet (1.214 acres) and is zoned RC-5. The Petitioners have owned the property for over 80 years, and the site contains 3 separately deeded lots. The Petitioners propose to combine the lots, build one single family dwelling (50' x 65') and two garages (24' x 24'). The garages will be located in the front yard of the new dwelling (facing Chestnut Road), which also requires variance relief under B.C.Z.R. §400.

The Special Hearing relief is essentially a “housekeeping” measure, in that it merely seeks to amend (in accordance with the terms of this Order) the prior 1973 zoning case involving this property and construct a new single family dwelling on site. The proposed improvements will greatly reduce the density and impervious surfaces presently existing, and will be an improvement to the neighborhood. As such, the Special Hearing will be granted.

Based upon the testimony and evidence presented, I will 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).

The Petitioners have met this test. The subject property is composed of 3 separate (and narrow) parcels that were configured long before the adoption of the B.C.Z.R. Thus, the property is unique for zoning purposes. The Petitioners would experience a practical difficulty if the regulations were strictly enforced, given they would be unable to complete the proposed improvements to the property, which will eliminate three (storm damaged) dwellings to be replaced with one single family dwelling constructed according to modern standards.

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 1st day of March 2013, 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."), (1) To amend (in accordance with the terms of this Order) the previous site plan in zoning Case No. 1973-0026-A, by removing all structures and accessory structures at 3800, 3802 and 3802A Chestnut Road; and (2) To allow a new structure and new accessory structures (2 garages) with new address at 3802 Chestnut Road, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' Variance request under the B.C.Z.R., (1) to permit 38 ft. +/- side yard setbacks for the single family dwelling in lieu of the required 50 ft. side yard setbacks, and 34 ft. +/- for new decks for both side yard setbacks in lieu of the required 37.5 ft.; (2) to permit 11 ft. +/- side yard setbacks for the garages in lieu of the required 50 ft. side yard setbacks; (3) To allow in a RC 5 zone an undersize lot of 1.214 acres in lieu of the required 1.5 acres; and (4) to permit the accessory structures (garages) to be located in the front

yard instead of the required rear yard location, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for 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.

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