

IN RE: **PETITIONS FOR SPECIAL HEARING * AND VARIANCE**

(326 Maple Avenue) * OFFICE OF
15th Election District * ADMINISTRATIVE HEARINGS
7th Councilmanic District * FOR BALTIMORE COUNTY
Joseph & Darlene Brinkmeier
Petitioners * Case No. 2013-0219-SPHA

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Joseph & Darlene Brinkmeier, legal owners. The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve an accessory structure (detached garage) with a footprint larger than the principal dwelling.¹ The variance petition seeks relief from B.C.Z.R. to permit a proposed accessory structure (detached garage) with a height of 20 ft in lieu of the maximum allowed 15 ft.

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 Joseph Brinkmeier. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition. The file reveals that the Petition was properly advertised and the site was posted as required by the Baltimore County Zoning Regulations.

The subject property is 10,000 square feet in size and is zoned DR 5.5. The Petitioner stated that he wanted to construct the garage so that he and his family could park their vehicles

¹ I have reworded for sake of clarity the text of the Petition for Special Hearing.

off of the street. Mr. Brinkmeier also stated that he does all of his own mechanical work on his vehicles, and would like to install a car lift in the garage, which necessitates the height variance. The Petitioner stated his house is 32' x 36', or 1152 square feet, while the proposed garage would be 30' x 40', or 1200 square feet. Since the accessory structure would be larger than the principal dwelling, Special Hearing relief is required.

There were no substantive Zoning Advisory Committee (ZAC) comments received.

Based upon the testimony and evidence presented, I will grant the Petition for variance.

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 Petitioners have a narrow and deep lot, which is unique and also imposes certain building constraints. If relief were denied, the Petitioners would experience a practical difficulty, since they could not construct the proposed improvement. I also believe the relief can be granted without negatively impacting the health, safety & welfare of the community.

I will also grant the Petition for Special Hearing. Under the B.C.Z.R., an “accessory building” is one that is (among other things) “subordinate” to the main building. B.C.Z.R. §101.1. As noted earlier, the proposed garage is only slightly larger than the principal dwelling (by 48 square feet). Mr. Brinkmeier indicated he spoke with both of his adjoining neighbors, and that neither expressed any concern about the proposed garage. In these circumstances, I believe the relief is warranted to permit construction of the garage with a (slightly) larger footprint than the principal dwelling.

Pursuant to the advertisement, posting of the property, and the 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 4th day of June 2013, by this Administrative Law Judge, that Petitioners' request for Special Hearing to approve an accessory structure (detached garage) with a larger footprint than the principal dwelling, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioners' Variance request from B.C.Z.R., to permit a proposed accessory structure (detached garage) with a height of 20 ft in lieu of the maximum allowed 15 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner 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, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioners or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.

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/sln