

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1232 S. 48 th St.)		
12 th Election District	*	OFFICE OF ADMINISTRATIVE
7 th Councilmanic District		
Carroll E. Hofstetter, Jr.	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0224-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Hearing filed by Carroll E. Hofstetter, legal owner. The Petitioner is requesting Special Hearing relief 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 the location of a proposed detached accessory structure (garage) that is not on the same lot as the principal dwelling. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing held for this case was Carroll E. Hofstetter. 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 properly posted as required by the Baltimore County Zoning Regulations.

No substantive Zoning Advisory Committee (ZAC) comments were received from any County agency.

Testimony and evidence revealed that the subject property is approximately 0.52 acres and is zoned DR 5.5. The Petitioner in fact owns three adjoining lots (Lots 24, 25 & 26, as shown on the plat marked as Exhibit 2). Their home is located on Lot 24, and they propose to construct the detached garage (25' x 35') on lot 26. The Petitioner said he informed the staff at the zoning office

that he wanted to construct the garage with a 22' height, in lieu of the required 15', although the petition in the case reflected only the request for Special Hearing relief. In these circumstances, I believe the Petitioner should be allowed to amend the petition to include the request for variance relief regarding the height of the structure. The Petitioner stated that he spoke with both adjoining neighbors (James Batton & John Petrush) and neither expressed any concern regarding the garage. The Petitioner testified the garage would be used to store tools and household items, and would not be used for commercial purposes or as a dwelling.

The Petition for Special Hearing requires little discussion. The Petitioner in fact uses and regards himself as owning just one lot, and only learned when filing for zoning relief that his property contains three (undersized) lots. The granting of relief will in no way jeopardize the health, safety or welfare of the community. As such, the petition 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).

The Petitioner has met this test. As noted earlier, the property is comprised of three lots, which were platted in 1920. See Exhibit 2. As such, the property is unique for zoning purposes. If the regulations were strictly enforced, the Petitioner would experience a practical difficulty, since he could not construct the garage to a height that will allow for storage of ladders and other large equipment. The grant of relief will not be injurious to the community's health, safety, and welfare, as demonstrated by the lack of county or community opposition.

Pursuant to the advertisement, posting of the property, and public hearing, and after

considering the testimony and evidence offered, I find that Petitioner's Special Hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED, this 7th day of June, 2013 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing 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 the location of a proposed detached accessory structure (garage) that is not on the same lot as the principal dwelling, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance, seeking approval for a detached accessory structure (garage) with a height of 22' in lieu of the required 15', be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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.
- 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