

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(514 Spring Lane)	*	OFFICE OF
15 th Election District		
7 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
Herbert M. McGowan, Jr.		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2013-0242-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 Herbert M. McGowan, Jr., legal owner of subject property. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve an accessory structure (detached garage) in the rear yard that is larger than the principal dwelling. The Variance petition seeks relief from B.C.Z.R. § 400.3 to permit a proposed 2-story accessory building (garage with loft area) with a height of 23 ft. 10 in. 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 Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Herbert M. McGowan, Jr. and Albert Morlock. There were no Protestants or interested citizens in attendance. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received and are included in the file. Substantive comments were submitted by Department of Environmental Protection and Sustainability (DEPS), Bureau of Development Plans Review (DRP) and Department of

Planning (DOP), and the relief granted herein will be conditioned upon compliance with those agencies' requirements.

The subject property is 1.07 acres in size and is zoned DR 5.5. The property is improved with a single family dwelling constructed in 1899. The Petitioner stated that the home is situated in a very wooded area, and that he really has only one "neighbor," who resides at 518 Spring Lane. The Petitioner wants to construct the garage to store a recreational vehicle, boat and outdoor equipment. To do so requires zoning relief.

The petition for Special Hearing seeks approval for an accessory structure (detached garage) in the rear yard that is (slightly) larger than the principal dwelling. The proposed garage would be 960 sf. (24' x 40'), while the home is 24' x 36' or 864 sf. In these circumstances, the garage would not overcrowd the site (which is just larger than 1 acre) or be out of proportion to the dwelling. 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).

The Petitioner has met this test. The property is located on a private road and is served by well and septic, while the other homes in the area are on public utilities. Thus, the property is unique for zoning purposes. If the regulations were strictly enforced the Petitioner would experience a practical difficulty given that he could not construct the garage to a height that would accommodate his storage needs.

Finally, I do not believe the grant of variance relief would endanger the public's health, safety and welfare. This is demonstrated by the support of the Petitioners only neighbor, who wrote a letter indicating he has "no issues" with the proposed garage. Exhibit 2.

One final issue merits discussion, regarding the DOP's comment that "vegetative screening" be provided to screen the garage from the adjoining property at 518 Spring Lane. The owner of that property, Donald Frederick, indicated that there is "no need for (the shrubbery) since there is already a privacy fence and existing trees there." Exhibit 2. In these circumstances, I believe that such vegetative screening is not required.

Pursuant to the advertisement, posting of the property, and the 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 26th day of June 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to approve an accessory structure (detached garage) in the rear yard that is larger than the principal dwelling, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Variance pursuant to § 400.3 to permit a proposed 2-story accessory building (garage with loft area) with a height of 23 ft. 10 in. in lieu of the maximum allowed 15 ft., 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.
- Petitioner must prior to issuance of a building permit satisfy the ZAC comments submitted by DPR, DEPS and DOP (with the exception of the vegetative screening discussed above), which are attached hereto and incorporated herein.

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