

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(29 Pelczar Avenue)		
15 th Election District	*	OFFICE OF
7 th Council District		
Rachel A. Cantori & Renee Cantori	*	ADMINISTRATIVE HEARINGS
Michael G. Cantori,		
	*	FOR BALTIMORE COUNTY
Legal Owners		
	*	Case No. 2021-0020-SPH
Petitioners		

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Special Hearing filed by Michael G. Cantori and Renee Cantori, his wife, and Rachel A. Cantori, their daughter, legal owners of the property (the “Petitioners”) for the property located at 29 Pelczar, Avenue, Essex (the “Property”). A Special Hearing was filed pursuant to Baltimore County Zoning Regulations (“BCZR”), § 500.7 to permit an accessory (in-law) apartment in a detached structure on a residential lot.

Due to the COVID-19 pandemic, a WebEx hearing was conducted. The Petition was properly advertised and posted. Michael G. Cantori appeared in support of the Petition along with Kevin Day, an architect with Living Design Lab who prepared a site plan (the “Site Plan”). (Pet. Ex. 3). Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), and the Department of Environmental Protection and Sustainability Development (“DEPS”). Those agencies did not oppose the requested relief. Christopher Porter, 31 Pelczar Ave. appeared and testified.

The Property was created as Lot 39 as shown on the Amended Plat of Edgewood Park in 1943. (Pet. Ex. 1). It is approximately 8,000 square feet in size (Pet. Ex. 3) and is zoned Density Residential (DR 5.5) (Pet. Ex. 2). The Property is improved with a 2-story single family dwelling

(1,145 sf) and a 1-story, detached garage with an upper storage loft (550 sf). (Pet. Ex. 12). The garage, which is 14 ft., 9 inches tall, is located in the rear of the Property. (Pet. Exs. 3). A paved driveway runs along the southern Property line and leads back the garage. (*Id.*). Photographs of the existing garage were provided. (Pet. Ex. 5). Connected to the rear of the garage is a storage shed. (*Id.*).

The Petition proposes to convert this garage into an accessory dwelling unit with 1 bedroom, a combined kitchen and living room, 1 bathroom, and a fenced in patio area in front. Mr. Cantori testified that he and his wife Renee will occupy the accessory apartment when they are not living on their boat. Mr. Day explained that the garage doors become windows. The upper storage loft and storage shed in the rear will remain. Design schematics of the converted space were submitted. (Pet. Exs. 7-11). There is no change proposed to the height of the garage.

Mr. Cantori acknowledged that if the requested relief is granted a fully executed and notarized conforming Declaration of Understanding will be submitted and filed in the Land Records of Baltimore County. No request was made for separate utility meters or water or sewer service. As such, the electricity and public utilities for the converted garage will be connected to the home. All improvements to the garage will meet applicable building codes. Christopher Porter, who resides in the adjacent home to the south of the Property testified that, after listening to the testimony and viewing the evidence, he was not opposed to the Petition.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, § 500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of

Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). To approve an accessory apartment in a detached garage, the evidence must meet BCZR, § 400. § 400.1 provides that the detached garage be located in the rear of the Property and shall not occupy more than 40% of the rear yard. § 400.2 requires that the accessory structure shall be set back not less than 15 ft. from the center line of any alley on which the lot abuts. § 400.3 limits the height of the accessory structure to 15 ft.

In addition, § 400.4 directs that an accessory apartment is permitted as a temporary use within an accessory structure on the same owner-occupied lot as the principal dwelling in any zone that permits single-family dwellings subject to the following:

B. If located within an accessory building on the same owner-occupied property as the principal single-family detached dwelling:

1. An applicant shall file a request for a special hearing and a use permit with the Department, together with a declaration of understanding as required by Subsection A1 of this section, and a public hearing before the Office of Administrative Hearings is required.
2. The size of the accessory apartment may not exceed 1,200 square feet, and the accessory building shall comply with the requirements of § 400.
3. Following a public hearing, the Office of Administrative Hearings may grant a request upon a finding that the size, location, and purpose of the accessory apartment conform with § 502.1 and may impose such conditions, restrictions or regulations consistent with § 502.2 as may be deemed necessary or advisable for the protection of surrounding and neighboring properties, including the express prohibition that the

accessory apartment not be converted to a second dwelling beyond the scope of this section.

4. The accessory apartment may not have separate utility meters or water and sewerage services unless approved by the Office of Administrative hearings based on specific findings of necessity for the accessory building.

Based on the testimony and exhibits, I find that the Petition should be granted. I specifically find that the accessory structure, as depicted in the site plan and architectural drawings, will comply in all respects with BCZR § 400.1 in that the detached garage is already located in the rear yard and does not occupy more than 40% of the rear yard. There is no alley abutting the Property and therefore it meets the setbacks under BCZR, § 400.2. The height is under 15 ft. per BCZR, § 400.3. In regard to the requirements of BCZR, § 400.4.B, size of the accessory building will remain at 550 sf.

I also find that the size, location and purpose of the accessory apartment meets each of the factors in BCZR, § 502.1. Specifically, it is a temporary use by related family members who are each legal owners of the Property. The only changes to garage are interior and therefore the request will not interfere with adequate light and air, or cause harm to the public health, safety or welfare of the neighborhood, particularly in light of the lack of opposition neighbors. There will not be additional congestion in the roadways or overcrowding of the land as the same owners will reside in the accessory structure with the same number of vehicles. All interior improvements will meet building codes and as such, there is no potential hazard from fire, panic or other danger. Connections for water and sewer will be through the existing home and therefore will not interfere with public improvements. I further find that the accessory apartment use is consistent with the BCZR as the requirements for the same are outlined in BCZR, § 400.4. Lastly, I find there are no proposed additional impermeable surface improvements and no environmental or natural resources

on the Property. Accordingly, I find that the proposed use should be granted, subject to the conditions in the Order.

THEREFORE, IT IS ORDERED this 30th day of **April, 2021** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to BCZR, §500.7 to approve an accessory use in-law apartment in a detached structure on a residential lot is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at his own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. The proposed structure including the attached storage shed and/or loft shall not be used for commercial purposes.
3. The accessory apartment shall not be converted into a second dwelling beyond the scope of BCZR, § 400. The accessory apartment shall only be utilized by the Petitioners and may not be used by any person other than the Petitioners for any other reason. When the accessory apartment is no longer occupied by any person named in the use permit or if the Property is sold, the use permit shall terminate.
4. The accessory apartment shall not have a separate utility meter, or separate water and sewerage connections or services.
5. Prior to the issuance of the use permit, Petitioners shall file and record at their expense, an executed and notarized Declaration of Understanding and property description along with a copy of this Order, in the Land Records of Baltimore County, and file a copy of the same with the Department of Permits, Approvals and Inspections.

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

A handwritten signature in black ink that reads "Maureen E. Murphy". The signature is written in a cursive style with a large initial 'M' and a distinct 'E'.

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm