

IN RE: PETITION FOR VARIANCE
(4516 Old Court Road)
3rd Election District
2nd Council District
Albert & Deborah Spence
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2020-0028-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County for consideration of a Petition for Variance filed by the legal owners of the subject property, Albert and Deborah Spence (“Petitioners”). The Petitioners are requesting Variance relief pursuant to Baltimore County Zoning Regulations (“BZCR”) § 400.1 to permit an existing accessory structure (garage) to be located in the front and side yard in lieu of the required rear yard and with a setback of 0 ft. in lieu of the required 2.5 ft. A site plan was marked as Petitioners’ Exhibit 1.

Due to the COVID-19 pandemic, a WebEx hearing was conducted remotely by computer and/or phone participation. Petitioners Albert and Deborah Spence, appeared in support of the requested relief. Albert Spence appeared on behalf of the Petitioner. There were no protestants in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. The Zoning Advisory Committee (“ZAC”) comments were received and are made part of the record of this case. There were no adverse ZAC comments submitted by any of the County reviewing agencies. There is, however, a “stop work” order in place that was issued by the County in September, 2019 due to the fact that the Petitioners did not obtain a permit prior to commencing construction of the subject garage.

Mr. Spence testified that the contractor he hired to build the garage was responsible for obtaining any necessary permits and that he was not aware what, if any, permits were needed. He was further unaware that a variance was needed. Further, until a boundary survey was recently done he was not aware that the tip of one corner of this garage encroaches on the adjoining property at 4512 Old Court Road. The Petitioners submitted an “Encroachment License Agreement” that they have entered with their neighbor, Reverend Lucy Ware, which permits this encroachment.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The subject property is somewhat irregularly shaped and construction of this garage in the rear of the residence would have required the addition of substantially more impervious driveway. As such the property is unique. The Spences explained in their Petition that they have several expensive vehicles that they wish to house in the garage in order to avoid theft and vandalism. They explain that their home is in close proximity to the Old Court Metro station and there is a high volume of foot traffic and petty crime in the area. They would, therefore, suffer practical difficulty and hardship if they were unable to house their vehicles. Mr. Spence acknowledged that he unwittingly went about this process in a backwards fashion and he expressed regret that he had not obtained the proper permit and variance relief prior to construction of the garage. I find that this was an honest mistake and I believe the requested variance relief can be granted within the spirit and intent of the BCZR and without causing harm

to the public health, safety or welfare.

THEREFORE, IT IS ORDERED, this **25th** day of **August, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief, from BCZR § 400.1 to permit an existing accessory structure (garage) to be located in the front and side yard in lieu of the required rear yard and with a setback of 0 ft. in lieu of the required 2.5 ft. be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for their appropriate permits and be granted same upon receipt of this Order; however, Petitioners are 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, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- Petitioners or subsequent owners shall not convert the garage into a dwelling unit or apartment. The garage shall not contain any sleeping quarters, kitchen or bathroom facilities, unless the proposed bathroom facilities are approved by the County agencies.
- The proposed detached garage shall not be used for commercial purposes.

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

Signed
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:dlm