

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(16323 Matthews Road)	*	OFFICE OF
8 th Election District		
3rd Council District	*	ADMINISTRATIVE HEARINGS
Mary & Donald Sloat		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2020-0150-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Mary and Donald Sloat, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”), to permit an accessory (in law) apartment permitted as a temporary use within an existing accessory building situate on the same owner occupied lot as the principal dwelling. In addition, a Petition for Variance was filed pursuant to § 400.4.B.2 , of the BCZR to allow the size of the accessory (in law) apartment in an existing building to be 1,352 sq. ft. in lieu of the maximum 1,200 sq. ft.

Due to COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. A site plan prepared by Bruce Doak of Bruce E. Doak Consulting, LLC was marked and accepted into evidence as Petitioners’ Exhibit 1.

Mary and Donald Sloat appeared in support of the requests. Bruce Doak also attended. Frank X. Borgerding, Esq. represented the Petitioners. There were no protestants or interested persons in attendance. Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and from the Department of Environmental Protection and Sustainability (“DEPS”).

The property is approximately 3.95 acres and is zoned RC 7. Mr. Doak explained that the principal structure is a large “manor house” that was built in 1930. This residence is occupied by the Petitioners’ son and his family. There are two other existing structures – an office/studio, and a former tenant house, which is the structure that is proposed as the “in law” apartment. The office/studio will not be used for any residential purpose. The tenant house will be converted to living space for the Petitioners, Mary and Donald Sloat. Mr. Doak further explained that the existing tenant house structure is 1352 sq. ft. and therefore variance relief is needed from the 1200 sq. ft. maximum permitted under BCZR § 400.4.B.2. A Declaration of Understanding in conformance with BCZR § 400.4 was admitted as Petitioners’ Exhibit 7. Photos submitted by Mr. Doak show that the structure in question is well screened from the road and from the other surrounding homes by the topography and the mature trees and shrubbery. A letter of support from the nearest neighbor was admitted as Petitioners’ Exhibit 8. Finally, Mr. Doak explained that the proposed in law apartment already has its own septic system so the plan is to utilize this system rather than tying into the main house’s septic system, and that this requires express authorization under BCZR § 400.4.B.4.

SPECIAL HEARING

Based on the record evidence I find that the proposed in law apartment fully conforms with BCZR § 400.4. Indeed, as Mr. Doak suggested, this proposed use is precisely the sort of use envisioned by this zoning regulation. I further find that the proposed in law apartment meets all the requirements of BCZR § 502.1 and that the Special Hearing relief can be granted within the spirit and intent of the BCZR and without causing harm to the public health, safety, or welfare.

VARIANCE

I also find that the variance relief should be granted. 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 property is irregularly shaped and has steep topography and is well forested. Further, it has several structures that pre-date the zoning regulations, including the tenant house structure that is the subject of this case. It is therefore unique. The petitioners would suffer practical difficulty and hardship if the variance were denied because they would have to deconstruct part of the existing structure in order to get down to the prescribed 1200 square feet. This would be nonsensical and unproductive. I find that the 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 **7th** day of **December, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the BCZR, to permit an accessory (in law) apartment permitted as a temporary use within an existing accessory building situate on the same owner occupied lot as the principal dwelling is hereby **GRANTED**.¹

IT IS FURTHER ORDERED that the in law apartment may utilize the existing septic system that serves this structure.

¹ The Declaration of Understanding (Exhibit 7) must be properly signed, dated, and notarized prior to the issuance of permits.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to § 400.4B.2, of the BCZR to allow the size of the accessory (in law) apartment in an existing building to be 1,352 sq. ft. in lieu of the maximum 1,200 sq. ft. is hereby GRANTED.

The relief granted herein shall be subject to the following:

- 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.
- The other accessory structure on the property shall not be used for residential or commercial purposes.
- The Declaration of Understanding, along with this Order, shall be filed in the Land Records of Baltimore County.

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