

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(900 Army Road)		
9th Election District	*	OFFICE OF
2 nd Council District		
Elizabeth & Ziad Bakri	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2020-0261-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Special Hearing filed by Elizabeth and Ziad Bakri for the property located at 900 Army Rd., Ruxton, MD (the “Property”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) §500.7 to modify Condition 2 in Case No. 2015-0006-A to permit a bathroom for private, residential use in the existing detached garage.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. The Petitioner Elizabeth Bakri appeared along with Patrick D. Jarosinski, the architect who prepared a site plan of the Property. (Pet. Ex. 3). Adam Rosenblatt, Esquire and Venable, LLP represented the Petitioners. There were no Protestants or interested citizens 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”). Those agencies did not oppose the requested relief.

FACTS AND EVIDENCE

The case proceeded by way of modified proffer from Mr. Rosenblatt who described the Property using an aerial photo showing its location. (Pet. Ex. 1). The Property is approximately

2.734 acres and is split-zoned density-residential (DR 1 and DR 2). In 2015, the Petitioners' predecessors in title were granted a variance from side and front yard setbacks as well as from height regulations (Case No. 2015-0006-A). The Order in that case prohibited the detached garage from having bathroom facilities. (Pet. Ex. 2). A photo of the detached garage was presented. (Pet. Ex. 4). Ms. Bakri testified that she is requesting a full bathroom with a tub/shower for personal, family use. Ms. Bakri worked with the Ruxton-Riderwood-Lake Roland Area Improvement Association, Inc. ("RRLRAIA") to prepare a Restrictive Covenant Agreement dated September 8, 2020 wherein the parties have agreed that the garage would not be converted into an apartment or dwelling unit, will not have a bedroom, and will not have a kitchen. (Pet. Ex. 5). Mr. Jarosinski testified that he applied for the Variance relief in the prior case in 2015 and that he designed the detached garage. (Pet. Exs. 2, 4).

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). After considering the testimony and evidence, I am persuaded that the Petition for Special Hearing is the appropriate relief under BCZR, §500.7 and should be granted. Based on the evidence presented, I find that the bathroom facilities can be added to the existing detached garage within the spirit and intent of

the BCZR and without harming the general public.

THEREFORE, IT IS ORDERED this 25th day of **February, 2021** by this Administrative Law Judge, that the Petition for Special Hearing seeking relief from the BCZR § 500.7 to Modify Condition No. 2 in Case No. 2015-0006-A to permit a bathroom for private, residential use in the existing detached garage 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 their 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. Petitioners and all subsequent owners shall not convert the detached garage into a dwelling unit or apartment. The detached garage shall not contain any sleeping quarters, living area, and/or kitchen.
3. The detached garage shall not be used for commercial purposes.
4. A copy of the Restrictive Covenant Agreement dated September 8, 2020 is attached hereto and incorporated herein in its entirety.

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



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

PMM/dlm

Attachment: Restrictive Covenant Agreement

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT (this "Agreement") is made this ___ day of 9/18/, 2020 (the "Effective Date"), by and between ZIAD BAKRI and ELISABETH BAKRI, (singly and collectively the "Owner"), and THE RUXTON-RIDERWOOD-LAKE ROLAND AREA IMPROVEMENT ASSOCIATION, INC., a Maryland Corporation ("RRLRAIA"). The Owner and RRLRAIA are collectively referred to as the "Parties."

RECITALS:

A. Owner is the owner by the entireties of property in the Ruxton area of Baltimore County (the "County") with improvements on it known as 900 Army Road and further described in a deed dated November 15, 2019, and recorded among the land records of Baltimore County in Liber 42165, folio193 (the "Property").

B. RRLRAIA is an association of residents in the area surrounding the Property interested in preserving the existing character of the area in the vicinity of the Property and protecting the community from inappropriate types of land uses.

C. The Property was the subject of zoning variance Case No. 2015-0006-A, wherein the prior owner of the Property sought and obtained a variance to construct a detached garage (the "Garage") in the side or front yard of the dwelling on the Property with a height of twenty-two feet (22') in lieu of the maximum permitted fifteen (15') feet. A copy of the zoning order (the "Zoning Order") is attached hereto as Exhibit A. The Zoning Order imposed a condition stating that the then owner and any subsequent owners "... shall not convert the subject garage into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living room area, kitchen or bathroom facilities."

D. The Owner desires to convert a portion of the Garage to an exercise room and a play area for their children and to construct a full bathroom with a shower.

E. The Owner is prepared to file a petition for special hearing (the "Special Hearing Request") to modify the conditions imposed in the afore-mentioned Zoning Order to permit the bathroom, exercise room and play area in the Garage.

F. RRLRAIA has expressed a willingness not to contest the Special Hearing Request provided that certain safeguards are put in place to ensure that the garage is not converted into an apartment or living quarters in violation of the BCZR.

WITNESSETH

NOW, THEREFORE, in consideration of the mutual agreements and understandings contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Agreements.**

A. To the Parties knowledge, the foregoing Recitals are true and correct and are incorporated herein by reference.

B. The Owner agrees that:

i. The Garage will not be rented, leased, or otherwise used as a second living space on the Property or contain a bedroom. The Garage will only be used as a recreational room, home gym area, or other area for private, personal use of the residents living in the single-family dwelling on the Property and not as a bedroom.

ii. There shall be no kitchen in the Garage.

iii. In the event the Special Hearing request is granted, Owner and its successors or assigns will permit Baltimore County, upon reasonable notice of at least three (3) days, to inspect the Garage every three (3) years to ensure that it is not converted into an apartment, bedroom or living space or that kitchen equipment has been installed.

C. At the time of the Zoning Special Hearing the Owner shall present a copy of this Restrictive Covenant Agreement for incorporation into any Zoning Order granting the requested relief.

D. This Restrictive Covenant Agreement shall become effective upon the Zoning Order granting the Special Hearing relief becoming final and unappealable.

2. **Binding Effect.** Within ten (10) days of any Zoning Order granting the requested relief becoming final, Owner shall record this Agreement among the Land Records of Baltimore County, at Owner's sole expense. This Agreement and the Parties' rights and obligations hereunder shall run with and bind the Property and shall be binding upon and inure to the benefit of the Parties' personal representatives, heirs, successors, and assigns. Upon the assignment or sale by Owner of the Property, Owner shall be relieved of all liabilities hereunder, but all purchasers and assignees shall be bound by the terms hereof. Owner shall promptly provide, at its own cost, a copy of the recorded Agreement to the RRLRAIA. If Owner fails to timely record this Agreement, then the RRLRAIA may do so and the Owner shall reimburse the RRLRAIA for their actual costs within thirty (30) days of Owner's receipt of the bill for such costs.

3. **Enforcement.** If any of the Parties is required to institute legal action to enforce the terms of this Agreement and is successful thereafter (whether by judgment or by settlement) in obtaining enforcement of this Agreement, the successful party shall be entitled to recover reasonable attorneys' fees and other reasonable costs of the action from the party against whom enforcement is obtained. However, as a prerequisite to recovery of fees and costs under this paragraph, the party seeking enforcement shall serve the alleged violator of this Agreement with written notice of the violation, and only if the alleged violator has failed to remedy or make substantial progress toward remedying the violation within thirty (30) days after receipt of this notice may legal action be instituted. Failure in any instance to enforce any of the covenants,

restrictions, and conditions contained in this Agreement shall in no way constitute a waiver or estoppel of the right to enforce the same or any other covenant, restriction, or condition of this Agreement.

4. **Notices.** All notices required by this Agreement shall be hand-delivered or sent by certified mail, postage prepaid, return receipt requested or by nationally recognized overnight delivery service, to the following addresses:

Owner: Ziad Bakri
Elisabeth Rakri
900 Army Road
Towson, Maryland 21204-6703

RRLRAIA: The Ruxton-Riderwood-Lake Roland Improvement Association, Inc.
8013 Bellona Avenue
Towson, Maryland 21204
Attn: Current President

If via USPS:
P. O. Box 204
Riderwood, MD 21139

cc: John B. Gontrum, Esq.
Whiteford Taylor Preston, LLP
1 Pennsylvania Avenue, Suite 300
Towson, MD 21204

Each of the Parties is responsible for updating the other party of any changes in the parties/addresses provided above, and any changes to the identified notice parties/addresses shall be made in writing to the other party.

5. **Miscellaneous.**

A. This Agreement may be amended only by written instrument executed by the Parties or any subsequent owner of the Property and RRLRAIA.

B. The Parties hereto warrant and represent that they have taken all necessary action required to be taken by their respective governing documents to authorize the execution of this Agreement.

C. This Agreement, which may be executed in separate counterparts, contains the entire understanding of the Parties.

D. The Parties each warrant that they have carefully read and understand this Agreement, are cognizant of its terms, and have had ample time to consult with counsel of their choice regarding their respective rights and obligations in connection herewith.

IN WITNESS THEREOF, the parties have executed this Agreement as of the date of the last acknowledgement.

WITNESS:

OWNER:

[Signature] (SEAL)
ZIAD BAKRI

[Signature] (SEAL)
ELISABETH BAKRI

THE RUXTON-RIDERWOOD-LAKE ROLAND
AREA IMPROVEMENT ASSOCIATION, INC.

[Signature]

[Signature] (SEAL)
BY:

STATE OF MARYLAND, COUNTY OF Baltimore
TO WIT:

I HEREBY CERTIFY, that on this 8th day of September, 2020, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared ZIAD BAKRI and ELISABETH BAKRI known to me, or satisfactorily proven, to be the parties whose names are subscribed to the within instrument, and that they executed the foregoing instrument for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

[Signature]
Notary Public

My commission expires: 11-15-2020

GERALD DIAZ
Notary Public, State of Maryland
Baltimore County
Commission Expires Nov. 15 2021

STATE OF MARYLAND, COUNTY OF Baltimore,
TO WIT:

I HEREBY CERTIFY, that on this 15th day of September, 2020, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared Henry Ward Classen known to me, or satisfactorily proven, to be an officer of The Ruxton-Riderwood-Lake Roland Area Improvement Association, Inc., and affirmed that he/she had the authority to act on its behalf, and that he/she executed the foregoing instrument for the purposes therein contained.

AS WITNESS my hand and Notarial Seal.

Barlene E. Ramsey
Notary Public



My commission expires: 6-19-22

CERTIFICATION

This is to certify that the within instrument was prepared by an attorney admitted to practice before the Court of Appeals of Maryland.

John B. Gontrum
John B. Gontrum