

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(1410 Gerber Lane)	*	OFFICE OF
8 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Brian & Kelly Pieninck		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2020-0275-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 Brian D. Pieninck and Kelly Pieninck, legal owners (“Petitioners”). The Special Hearing to permit two accessory structures (pool & pavilion) on the subject property without a principal structure, and to amend the approval of Case No. 2003-0231-SPH. In addition, a Petition for a Variance to permit the height of an accessory structure (pavilion) of 26 ft. in lieu of the maximum height of 15 ft. per Baltimore County Zoning Regulations (“BCZR”) § 400.3.

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 was marked and accepted into evidence as Petitioners’ Exhibit 1.

Tim Hartman, the builder of the proposed pavilion structure, appeared in support of the Petition. Bruce E. Doak from Bruce E. Doak Consulting also appeared and explained the site plan and requested relief. Neighboring property owners, Ken and Kerry Bosley, attended as interested citizens. Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability Development (“DEPS”) and from

the Department of Planning (“DOP”). They did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order.

Mr. Doak explained the following: The subject property consists of two adjoining lots, both owned by the petitioners: 1410 and 1412 Gerber Lane zoned RC 2. 1412 Gerber Lane is 2.5 acres and is improved with a large residence and several accessory structures. 1410 Gerber Lane is approximately 10.88 acres. It is currently vacant but once had a residence, a barn and several other farm structures associated with an emu farm. The electric and septic systems from the previous residence will be utilized by the proposed pool and pavilion, which will have much lesser septic capacity requirements than the former residence. The proposed pool and pavilion would be accessed by an existing driveway extending from the adjoining residence at 1412 Gerber Lane. The proposed pavilion structure will be “timber frame” so as to match the residence at 1412, and the proposed 26’ height will also match the existing residence. The pavilion will have a vaulted two story atrium design in the main room and will have storage capacity in the adjoining room and attic area. There will be a refreshment area with sink and refrigerator and a powder room. Mr. Doak explained that there is insufficient area to construct the pool and pavilion behind the residence at 1412 Gerber Lane, and that it would not be within the spirit and intent of the BCZR to construct them in the front yard of that property, as they would be highly visible from Gerber Road.

Mr. Doak further explained that he has hired Devin Leary, an environmental consultant, to address the DEPS comments concerning the intrusions on the forest buffer and forest conservation easement associated with the stream on the property. Evidently modifications were made to an existing driveway through these buffer and easement areas by a previous owner. Mr. Doak explained that Mr. Leary is in consultation with Glenn Schaffer of DEPS regarding this

issue and petitioner understands that no building permits will issue until the environmental impacts have been remediated to the satisfaction of DEPS. Mr. Doak further explained that the net result of the requested relief will be that there is far less impervious surface on the 1410 Gerber Lane property than there was when the emu farm was located there. The Order and site plan from a previous case involving these properties (Case No. 03-231_SPH) were admitted as Petitioners' Exhibits 5 and 6, and confirm this point. Finally, Mr. Doak explained that pursuant to the instant Petition, the Special Hearing relief which granted permission for an "in-law" apartment in the former residence at 1410 Gerber Lane will be abandoned and extinguished.

Based on this record evidence I find that the special hearing relief can be granted within the spirit and intent of the BCZR. Although the proposed pool and pavilion are on a separate lot, they will be located directly adjacent to the residence at 1412 Gerber Lane and will be accessed by a common driveway. Further, as explained above, the environmental impacts of these proposed structures will be minimal on this 10 acre parcel, as they are located at the corner of the parcel furthest away from the forest buffer and conservation easement areas.

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 unique in that it has forest buffer and conservation easements and has steep topography. Further, as explained above, the adjacent property at 1412 Gerber Lane cannot accommodate the proposed pool and pavilion structures, thus necessitating the variance relief. I

find that the requested height variance will not visually impact any adjoining property owners and that the timber frame design is compatible with the adjacent residence and with the RC 2 zone.

THEREFORE, IT IS ORDERED this 24th day of **February, 2021**, by this Administrative Law Judge that the Petition for Special Hearing permit two accessory structures (pool & pavilion) on the subject property without a principal structure; and to amend the approval of Case No. 2003-0231-SPH is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to permit the height of an accessory structure (pavilion) of 26 ft. in lieu of the maximum height of 15 ft. per Baltimore County Zoning Regulations (“BCZR”) § 400.3 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 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.
- Prior to issuance of permits Petitioners must comply with the ZAC comment submitted by DEPS, a copy of which is attached hereto and made a part hereof.
- The pavilion structure shall not be used for commercial or residential purposes.
- The Special Hearing approval of an “in-law” apartment granted in Case No. 03-0231-SPH is hereby vacated and extinguished.

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