

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(19675 Eagle Mill Road)	*	OFFICE OF
6th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Allison M. Rich & Weston R. Park		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2020-0221-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 Allison M. Rich and Weston R. Park, legal owners (“Petitioners”). The Special Hearing pursuant to § 500.7 and § 400.4 of the Baltimore County Zoning Regulations (“BZCR”) to approve an accessory horticultural nursery and accessory apartment in a proposed new accessory building on the same owner-occupied lot as the principle dwelling, which is in the RC-8 Zone. A Petition for a Variance was also filed pursuant to §1A09.7.B.5.b to permit the proposed accessory use In-Law Building 199 ft. from a cultivated pasture in lieu of the required 300 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 was marked and accepted into evidence as Petitioners’ Exhibit 1.

The property owners and petitioners, Allison M. Rich and Weston R. Park appeared at the hearing. An adjoining property owner, Raymond Seitz, also attended. 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.

The property is approximately 2.21 acres and is zoned RC 8. Allison Rich testified that they recently constructed a modest 1200 residence on the property. I note that this was permitted pursuant to variance relief approved in Case No. 2019-0108-A, wherein ALJ Beverungen found that the property was unique and granted the variance after these same petitioners modified the site plans to conform to the maximum extent possible with the RC-8 setbacks. Ms. Rich explained that her mother needs some daily living assistance and that they wish to construct this accessory apartment for that purpose. She further explained that they have worked with the DOP to design a connected horticulture nursery and shed to serve the purposes of this RC-8 zone and their expanding farmstead. She and Mr. Park testified that they have entered a contract to purchase an adjoining 3.5 acre parcel to the east in order to expand their agricultural footprint. They submitted architectural drawings depicting the compatible rural design of this proposed structure. (Petitioners' Exhibit 2). With regard to the accessory apartment, they also submitted the required declaration of understanding pursuant to BCZR § 400.4. (Petitioners' Exhibit 1).

Mr. Dietz, the adjoining property owner to the south and west, testified that based on the site plan he has no objection to the requested relief since the proposed structure will be sited as far as possible from his pasture land.

Based on this record evidence I find that the special hearing relief for a combined horticultural nursery and accessory apartment can be granted within the spirit and intent of the BCZR and without harm to the general health, safety, or welfare. I further find that the variance relief should also 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 has already been found to be unique in Case No. 2019-0108-A. The petitioners would suffer practical difficulty and hardship if the variance were denied because they would not have sufficient setbacks anywhere on their property to construct the proposed accessory structure. Further, they have sited the proposed structure to conform to the maximum extent possible with the required setbacks, and should therefore be granted the relief, unless it would be inconsistent with the spirit and intent of the BCZR or harm the public health, safety or welfare, and I find that it will not. *See, Montgomery County v. Rotwein*, 169 Md. App. 716 (2006).

THEREFORE, IT IS ORDERED this 7th day of **January, 2021**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BZCR”) to approve an accessory apartment in a proposed new horticultural nursery building on the same owner-occupied lot as the principle dwelling that is in the RC-8 Zone is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to § §1A09.7.B.5.b to permit the proposed accessory use In-Law Building 199 ft. from a cultivated pasture in lieu of the required 300 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 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.

- The proposed structure shall not be used for commercial purposes and shall not have a separate utility meter.
- Prior to issuance of permits Petitioners must comply with the ZAC comments submitted by the DOP, and DEPS of which a copy is attached hereto and made a part hereof.
- Prior to issuance of permits Petitioners shall submit a fully executed Declaration of Understanding pursuant to BCZR § 400.4, which shall then be filed, along with a copy of this Order, in the land records of Baltimore County.¹

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

¹ The Declaration of Understanding submitted as Exhibit 1 is unexecuted and is attached to an explanatory letter. Petitioners must fully execute and submit a separate and independent Declaration of Understanding.