

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(5222 Byerly Road) *	OFFICE OF
4 th Election District *	
3 rd Council District *	ADMINISTRATIVE HEARINGS
Michael S. Martin, <i>Legal Owner</i> *	
	FOR BALTIMORE COUNTY
Petitioner *	Case No. 2020-0039-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 Michael S. Martin, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to permit an existing accessory structure (garage) larger than the existing principal structure (single family dwelling). In the alternative, a Petition for Variance was filed pursuant to BCZR § 400.3 to permit an existing accessory structure (garage) to have a height of 19.5 ft. in lieu of the maximum height required of 15 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Michael Martin and Bruce Doak, surveyor appeared in support of the requests. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from Department of Planning (“DOP”) but that agency did not oppose the requested relief.

SPECIAL HEARING

Under BCZR § 500.7 relief can be granted provided that the requested relief does not run counter to the spirit and intent of the BCZR or cause harm to the public health, safety or welfare.

In the instant case the Petitioner asks to construct an accessory structure that is slightly larger (1728 sq. ft.) than his residence (1404 sq. ft.). The property in question is in an RC 2 zone and many of the surrounding properties in this rural area have outbuildings larger than their residences. The Petitioner explained that he needs a garage structure of this size in order to house all his various equipment and a boat. I find that the requested relief can be granted within the spirit and intent of the BCZR and without harm to the public health, safety and welfare.

VARIANCE

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 narrow and has a steep topography to the rear of the residence and this garage structure. As such the property is unique. As Mr. Doak explained at the hearing, the steep topography is part of the reason that the garage must be slightly taller than the permitted 15 feet. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be unable to construct a garage large enough to house all his equipment and his boat. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. It is noteworthy that the Petitioner obtained the written consent of all the surrounding property owners. (Petitioner's Exhibit 5).

THEREFORE, IT IS ORDERED this 17th day of **July, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to §500.7 of the BCZR to permit an existing

accessory structure (garage) larger than the existing principal structure (single family dwelling),
be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is 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, Petitioner would be required to return the subject property to its original condition.
2. Petitioner or subsequent owners shall not convert the proposed accessory building (detached garage) into a dwelling unit or apartment. The proposed accessory building (detached garage) shall not contain any sleeping quarters, living area, and kitchen or bathroom facilities.
3. The proposed accessory building (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

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