

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>(405 Chattolanee Hill Road)</b>		
<b>(2602 Greenspring Valley Road)</b>	*	OFFICE OF
3rd Election District		
2nd Council District	*	ADMINISTRATIVE HEARINGS
Derek J. Ziese & Christina G. Ziese	*	FOR BALTIMORE COUNTY
	*	
<b>Legal Owners/Petitioners</b>	*	<b>Case No. 2021-0082-SPHA</b>
	*	

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Special Hearing filed by Derek J. Ziese & Christina G. Ziese (the “Petitioners”) for the property located at 405 Chattolanee Hill Rd., in Greenspring Valley (“Garage Lot”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) §500.7, to permit an accessory structure (garage) on the Garage Lot without a principal structure (dwelling). Variance relief was also requested pursuant to the BCZR §400.3 to permit the height of that garage of 25 ft. in lieu of the maximum height of 15 ft. Additionally, Variance relief was requested from BCZR, §1A01.3.B.3 for the adjacent property located at 2602 Greenspring Valley Rd. (“House Lot”) to permit an existing garage to be attached to the principal structure (house) and have a side yard setback of 12 ft. in lieu of the required 35 ft. side yard setback.

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 Derek Ziese appeared at the hearing along with Bruce Doak of Bruce E. Doak Consulting, a registered surveyor who prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1). There were no opposing parties or interested citizens in attendance.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), Department of Environmental Protection and Sustainability (“DEPS”) which the agencies did not oppose the relief.

The case proceeded by way of modified proffer by Mr. Doak and Mr. Ziese. The House Lot is 1,002 acres and the Garage Lot is 0.896 acres. (Pet. Exs. 2A, 2B). The zoning for both Lots is Agricultural (RC 2) and both are owned by the Petitioners. (Pet. Exs. 2A, 2B, 3). Each Lot has its own private well and septic. (Pet. Ex. 1). The House Lot is improved with a 2-story, 2,130 sf single family home built in 1877, a 1-story detached garage, and paved driveway. (Pet. Exs. 6A, 6B). Petitioner testified that the house belonged to the caretaker of Burnside Manor Farm. The Garage Lot has the foundations of an old barn built in the 1860s. (Pet. Exs. 6C-6F). The paved driveway also extends between the lot line of the House Lot and the Garage Lot up to the old barn. (Pet. Ex. 1).

On the House Lot, Petitioners desire to convert the existing detached garage into additional living space and will construct a 418 sf extension between the house and garage. (Pet. Ex. 7). On the Garage Lot, Petitioners will use the old barn foundation to construct a 1-story, 2-car, detached garage with a loft for storage. Petitioners may also use the new garage as a home gym and/or recreational room necessitating the need for a bathroom with a shower. The architectural style of the proposed garage will complement the design of the house. The new garage will not have a kitchen or sleeping quarters. It already has a separate utility connection and separate well and septic. Neighboring property owners signed a document in support of the Petition. (Pet. Ex. 8).

SPECIAL HEARING

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).

Based on the evidence, I find that the Special Hearing relief to permit the detached garage on a lot without a principal dwelling is moot because the Lots have merged for zoning purposes.

*Friends of Ridge, et al. v. BGE*, 352 Md. 645, 724 A.2d 34 (1999). In accordance with the holding in *Friends of Ridge*:

We shall hold that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so. One way he or she may do so is to integrate or utilize the contiguous lots in the service of a single structure or project, as respondent proposes in the instant case. Although this is not the general application of the doctrine of merger as it relates to zoning, we perceive no rational objection to applying the same principles to the circumstances of this case, resulting in a larger parcel. For title purposes, the platted lot lines may remain, but by operation of law a single parcel emerges for zoning purposes.

*Id.* at 40. Both Mr. Doak and Mr. Ziese agreed that the Lots have merged for zoning purposes.

The old barn was in service to the house. The common driveway spans over the common boundary line between the House Lot and the Garage Lot. Each of the Lots by themselves are undersized.

Thus, while the lot lines will remain, I find that the Lots have merged for zoning purposes. As such there is no need to approve a garage on a lot without a principal dwelling and the Special Hearing Relief is moot.

## 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).

With regard to the requested setback variance for the existing garage on the House Lot of 12 ft. in lieu of the required 35 ft., that relief was an internal variance resulting from the Lot line between the House Lot and the Garage Lot. (Pet. Ex. 1). However, because the Lots have merged, the setback variance is no longer needed as there is 35 ft. or more between the existing garage on the House Lot and the Garage Lot. Accordingly, the setback variance is moot.

As for the height variance for the proposed detached garage, Petitioners are requesting a height of 25 ft. in lieu of 15 ft. due to the storage loft proposed. I find that the Property is unique due to its peculiar, triangular shape. The Property is different from other properties in the area because it has been improved with a home built in 1877, a detached garage and a barn built in the 1860s, each of which provides limited storage space. If not for the common driveway, the Property would be land-locked. I find that the Petitioner would suffer a practical difficulty and unreasonable hardship if the requested height variance was not granted because they would not be able to build the needed storage space in the loft. I also find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the support of the neighboring property owners.

THEREFORE, IT IS ORDERED, this **14th** of **June 2021**, by the Administrative Law

Judge for Baltimore County, that the House Lot and the Garage Lot have merged for zoning purposes;

AND IT IS FURTHER ORDERED, due to the merger of the Lots, the Petition for Special Hearing from BCZR, §500.7 to permit an accessory structure (garage) on the subject property without a principal structure (dwelling) is **MOOT**.

AND IT IS FURTHER ORDERED, that the Petition for Variance from BCZR § 400.3 to permit the height of an accessory structure (garage) of 25 ft. in lieu of the maximum height of 15 ft., be and it is hereby **GRANTED**; and

AND IT IS FURTHER ORDERED, that due to the merger of the Lots, the Petition for Variance from BCZR §1A01.3.B.3 to permit an existing garage to be attached to the principal structure (house) and have a side yard setback of 12 ft. in lieu of the required 35 ft. side yard setback is hereby **MOOT**.

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 subsequent owners shall not convert the proposed detached garage into a dwelling unit or apartment. The proposed garage shall not contain any sleeping quarters, living area, and kitchen facilities. The proposed garage may have a full bathroom to be used for residential purposes.
3. The proposed garage shall also not be used for commercial or industrial purposes.
4. The proposed garage shall use the existing separate utility or electric connection which previously connected to the electrical in the barn.
5. Petitioners must comply with the DOP and DEPS ZAC comments, copies of which are attached hereto and make a part thereof.

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

Signed  
MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm