

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(9 Chilhowie Court)	*	OFFICE OF
8 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Stephen & Jeanette Guy		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2020-0286-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 Stephen and Jeanette Guy, legal owners (“Petitioners”). The Special Hearing from the Baltimore County Zoning Regulations (“BCZR”) § 500.7 to permit a new addition to be used as an accessory (in-law) apartment.

A Variance from the Baltimore County Zoning Regulations (“BCZR”) § 1A04.3.B.2.b to permit a side yard dwelling addition with a front setback of 27 ft. and a side setback of 28 ft. in lieu of the required 50 ft. each, respectively.

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 Petitioners Stephen and Jeannette Guy, appeared at the hearing. Also in attendance was Andy Niazy, the Architect who prepared the elevations, which were admitted as Petitioners’ Exhibit 3. His *curriculum vitae* was admitted as Petitioners’ Exhibit 6. Anna Morphey and David Smith of Smith House builders also attended. Christopher D. Mudd, Esquire appeared and represented the Petitioners. There were no protestants or interested citizens in attendance. 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 1.65 acres and is zoned RC 5. At the outset of the hearing Mr. Mudd moved to amend the Petition in a couple of respects. First, he explained that he did not believe that the Special Hearing relief requested in the Petition was even necessary. As he explained, the proposed addition will be connected to the main residence and is therefore subject to BCZR § 400.4.A, which requires the applicant to simply apply for a use permit. It does not require a special hearing, as is required for accessory apartments in separate accessory structures under BCZR § 400.4.B. Mr. Mudd therefore asked that the Special Hearing request be dismissed as moot. The motion was granted.

Mr. Mudd then asked to amend the variance request to correct an oversight in the original Petition. To wit, he explained that during the 2008 CZMP process the parcel to the rear of the subject property was downzoned to RC 7. As a result, there is supposed to be a 150’ setback from that tract boundary. However, as Mr. Mudd explained, the tract in question is a county owned storm water management pond. Therefore, the setback requirements should not be enforced since the proposed addition will have no adverse impact on anything in the RC 7 parcel, or vice versa. With regard to the other variance requests, Mr. Mudd explained that the subject parcel is an irregular shape and is much longer and narrower than the surrounding lots. He further explained that the proposed addition cannot be built on the rear of the house without impacting the light and air of the existing home, and marring the architectural design. Finally, he explained that the variance relief will have no adverse impacts on the adjoining residential properties since they are both several hundred feet away and the lots are all well forested.

Based on this record evidence I find that the special hearing relief that was requested is not required and will be dismissed as moot. As for the variances, 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).

As discussed above, the shape and dimensions of the property are unique and trigger the need for the requested variances. If the variances were denied the Petitioners would suffer practical difficulty and hardship because they would be unable to build the proposed addition.

THEREFORE, IT IS ORDERED this 1st day of **March, 2021**, by this Administrative Law Judge that the Petition for Special Hearing seeking from BCZR § 500.7 to permit a new addition to be used as an accessory (in-law) apartment relief is hereby DISMISSED AS MOOT.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to the BCZR § 1A04.3.B.2.b to permit a side yard dwelling addition with a front setback of 27 ft. and a side setback of 28 ft. in lieu of the required 50 ft. each, respectively) is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a dwelling addition as close as 28 feet to adjacent RC 7 zoned land 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.

- Petitioners must comply with the DOP and DEPS ZAC comments, copies of which are attached hereto and made a part thereof.

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