

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(394 Stablers Church Road)	*	OFFICE OF
7th Election District		
3rd Council District	*	ADMINISTRATIVE HEARINGS
Richard Cucina Jr. & Sharon Cucina		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2021-0154-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Special Hearing and Variance filed on behalf of Richard Cucina, Jr., and Sharon Cucina, legal owners (“Petitioners”) for the property located at 394 Stablers Church Rd., Parkton (the “Property”). The Special Hearing was filed pursuant to Baltimore County Zoning Regulations (“BCZR”), §500.7 to permit an in-law apartment to be created in an existing accessory building (garage) under BCZR, §400.4, and for Variance relief from the BCZR § 400.3 to permit an existing accessory structure to have a height of 25 ft. in lieu of the maximum allowed 15 ft.

Due to the ongoing COVID-19 restrictions, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Petitioners, appeared *pro se*, in support of the Petition. Neighboring property owners appeared in opposition namely: Joe and Kris Crosswhite, 398 Stablers Church Rd. (the “Crosswhites”); and Jim and Rebecca Heaton, 390 Stablers Church Rd. (the “Heatons”).

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

The Property is approximately 7.5083 acres in size and is improved with a 2-story dwelling built in 1996 along with a detached garage. It is split-zoned Watershed Protection (RC 4) and Environmental Enhancement (RC 8). The detached garage is proposed for an accessory apartment where the Petitioners will reside. The Petitioners' son, Michael, and his wife Aubry and their daughter will reside in the home. Photographs of the existing house and garage were provided. (Pet. Exs. 9-12).

The existing detached garage fits 2 vehicles on the first floor, has an existing office as well as an outside portico all of which totals 1,042 sq. ft. (Pet. Ex. 15). The second floor, which measures 1,325 sq. ft., is, and will continue to be used, as a workshop. (Pet. Ex. 4). The height of the existing garage is 25 ft. and will not be raised any higher. Petitioners propose to renovate the first floor with 1 bedroom, a living and kitchen area. In addition, they want to enclose 158 sq. ft. of the existing portico to make a full bathroom; the remainder of the portico will be removed. Importantly, the footprint of the existing garage will not be expanded. The living quarters of the accessory apartment will measure 1,200 sq. ft.¹ Asphalt pavement which exists in front of the garage bays will be removed and replaced with a planting bed. There will be an outside patio but no garage.

A lot coverage diagram was also provided. (Pet. Ex.13). In the RC4 zone, a 10% limit coverage for impervious surfaces (structures and pavement) must be met. The lot coverage diagram shows that the total impervious surface is 0.049 (16,017 sq. ft./327,061 sq. ft. = 0.049). There is a shed shown on the lot coverage diagram which will be removed.

¹ Initially, Petitioners sought to expand the footprint of the accessory apartment as reflected on Pet. Ex. 3b and 4b. In response to comments from DOP dated July 14, 2021, Petitioners revised the proposed plan such that the accessory apartment will no longer expand beyond the existing footprint as reflected in Pet. Ex. 15.

John C. Roemer, IV, 392 Stablers Church Rd., emailed a written statement which indicated that his property shares a property boundary with the Petitioners. Mr. Roemer wrote that the Petitioners' detached garage is located 40 ft. from his property boundary and that it can be seen from his driveway. These facts notwithstanding, Mr. Roemer wrote that he does not object to the proposed accessory apartment. (See file).

The Crosswhites provided a copy of Restricted Covenants recorded in Land Records of Baltimore County (L8021, p 286) which they indicated is binding on eight (8) properties located on Stablers Church Rd. They contend that the Petitioners' Property is bound by the Covenants. Article IV of the Covenants provides that each property may only have one (1) detached dwelling for single-family occupancy. (Prot. Crosswhite Ex. 1). Accordingly, the Crosswhites assert that an accessory apartment in a detached garage is not permitted. The Crosswhites and Heatons were permitted to ask questions and to testify. After the Petitioners' presentation of evidence and in particular, the Revised Proposed First Floor Plan (Pet. Ex. 15) showing the renovations will not exceed the existing footprint, the Crosswhites and Heatons indicated that they had no objection to the proposal.

"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 testimony and exhibits, I find that the Petition for Special Hearing for an accessory apartment in the existing detached as depicted in the Revised Proposed First Floor Plan (Pet. Ex. 15), will comply in all respects with BCZR, §400.4, is within the spirit and intent of the BCZR, and will not cause harm to the public health, safety or welfare, particularly in light of the support of some of the neighbors. The Petitioners have executed and will file in the Land Records of Baltimore County a Declaration of Understanding which outlines compliance with BCZR, §400.4, substituting the Revised Proposed First Floor Plan (Pet. Ex. 15) as an Exhibit thereto.

I also find that the proposed accessory apartment meets the BCZR, §502.1 Special Exception factors. Given the size of the Property, and limitation as a temporary use for people related by blood or marriage, I find that the proposed use will not be detrimental to the health, safety or general welfare of the surrounding community. An accessory apartment on the same Property where their son and his family will live, will be useful to this extended family in the event that the Petitioners are in need of assistance in their later years.

I find that there will be no increase in traffic, no congestion of the land, or interference with light and air, in that the garage currently exists, and the same number of cars for this family currently park at the Property. All renovations will meet fire and safety codes. Therefore, there will be no hazard from fire, panic or other danger. There will not be any interference with adequate public facilities or public improvements as the Property is served by private well and septic (the adequacy of which will be reviewed by Groundwater Management prior to the issuance of a building permit), and Stablers Church Rd. appears to be a private road. I find that the proposed use is consistent with the BCZR and RC4 and RC8 zoning classifications. The lot coverage

diagram confirms that less than 5% of the Property will be covered by impermeable surface. Lastly, I find that the proposed use will not be detrimental to environmental or natural resources as no trees or vegetation are being removed.

Petitioners were instructed that the undersigned has no authority to interpret or enforce the Covenants provided by the Crosswhites. Petitioners would be wise to separately obtain approval for their proposal from any property owners who are bound by the Covenants.

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 Property is unique due its peculiar shape. I find that due to its uniqueness, the Petitioners would suffer a practical difficulty and unreasonable hardship if the existing garage, which is already 25 ft. high, had to be reduced in height to accommodate the accessory in-law apartment. The roof pitch of the existing garage matches the roof pitch on the house. The second floor of the existing garage will continue to be used for storage/workshop space and is not part of the accessory apartment. 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 lack of opposition.

THEREFORE, IT IS ORDERED this 9th day of **August, 2021** by this Administrative Law Judge, that the Petition for Special Hearing seeking relief to permit an accessory (in-law) apartment to be created in an existing accessory building (garage) is hereby **GRANTED** in accordance with the Revised Proposed First Floor Plan (Pet. Ex. 15) attached hereto and made a part hereof.

IT IS FURTHER ORDERED that the Variance from BCZR, §400.3 to permit an existing accessory structure to have a height of 25 ft. in lieu of the maximum allowed 15 ft. is hereby **GRANTED**.

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. The proposed structure shall not be used for commercial purposes.
3. Prior to issuance of permits Petitioners must comply with the ZAC comment submitted by the DEPS, a copy of which is attached hereto and made a part hereof.
4. The accessory apartment shall not be converted into a second dwelling beyond the scope of BCZR, §400. The accessory apartment shall only be utilized by the Petitioners and may not be used or occupied by any person other than the Petitioners for any other reason (including family members). When the accessory apartment is no longer occupied by any persons named in the use permit, or if the Property is sold, the use permit shall terminate. Upon termination, the renovations constructed for the accessory apartment will be removed and the accessory building will be restored to its original condition.
5. The accessory apartment shall not have separate utility, gas and electric and/or water/sewerage connections or services.

6. Prior to the issuance of the use permit, Petitioners shall file and record at their expense, an executed and notarized Declaration of Understanding along with a property description and a copy of the Revised Proposed First Floor Plan (Pet. Ex. 15), as well as a copy of this Order, in the Land Records of Baltimore County, and shall file a copy of the same with the Department of Permits, Approvals and Inspections.

7. Petitioners shall renew the use permit with Department of Permits, Approvals and Inspections every two (2) years by filing a renewal on a form approved by Department of Permits, Approvals and Inspections, to be dated from the month of the Order herein, and shall list the name of any person occupying the accessory apartment.

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

____ Signed _____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM:dlm