

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(7409 Brookwood Avenue)	*	OFFICE OF
14 th Election District		
6 th Council District	*	ADMINISTRATIVE HEARINGS
Wilmar Castillo		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No: 2021-0158-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 Wilmar Castillo, legal owner (“Petitioner”) under Baltimore County Zoning Regulations (“BCZR”) §500.7 to approve an Accessory (In-Law) Apartment to be located within an existing accessory building (garage) on the same lot as homeowner's single-family dwelling and for Variance relief from BCZR §400.1 to approve an accessory building (garage) with side setbacks of 1.3 ft. in lieu of the required 2.5 ft. side and rear setbacks.

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. The Petitioner appeared at the hearing in support of the Petition along with Brian Dietz, registered land surveyor with Dietz Surveying, Co. who prepared a site plan (the “Site Plan”). (Pet. Ex. 1). Douglas L. Burgess, Esquire represented the Petitioner. There were no Protestants or interested persons at the hearing.

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

The Property is 0.155 ac +/- (6,750 sf.) and is improved with a 1½ story single family dwelling measuring 1,075 sf and constructed in 1942. The Petitioner and his family, along with his mother-in-law Sonia M. Quinonez, reside in the home. To the rear of the home is a concrete, detached garage in the rear measuring 900 sf. with a height of 19.5 ft. (Pet. Ex. 4). The Property is 45 ft. wide and 150 ft. deep. It is zoned Density Residential (DR 5.5). The Property fronts on Brookwood Avenue.

The Petitioner explained that his mother-in-law, Ms. Quinonez, who is 62 years old and has health issues, needs to live on one level. The Petitioner is proposing to renovate the interior of the detached garage with independent living space for Ms. Quinonez including a kitchen, bathroom and sleeping quarters. The Petitioner has signed a Declaration of Understanding for an Accessory Apartment Use Permit and is prepared to record the same in Land Records. (See File). The accessory apartment will not have a separate utility meter, or separate water or sewer services. The detached garage connects to the utility, water and sewer in the house.

According to Mr. Dietz, who was accepted as an expert land surveyor, the 1924 Plat for Overlea Hills as recorded in Land Records of Baltimore County and includes the Property, shows a 5 ft. wide strip of land/reservation running southeasterly behind the homes along Brookwood Avenue. Based on his research, Mr. Dietz concluded that this area may have been intended as a reservation for future utilities or drainage, or it could have been intended as an alley. (Pet. Ex. 3). Mr. Dietz testified that that reservation area was never constructed, nor was it dedicated to Baltimore County.

If the reservation area was an alley, BCZR, §400.2 requires an accessory building to be set back not less than 15 ft. from the center line of any alley on which the lot abuts. Here, Mr. Dietz acknowledged that the Petition, as filed, only sought relief from BCZR, §400.1 for the rear and

side yard setbacks of 2 ½ ft. from those lot lines. At the hearing, a request was made to amend the Petition to include variance relief from BCZR, §400.2 (setback from center line of alley), *if needed*, and from §400.3 (height of accessory building not exceeding 15 ft.).

As to BCZR, §400.2, Mr. Dietz opined that using the detached garage for an accessory apartment will not be detrimental to the health, safety or general welfare and that the proposed use meets each of the factors set forth in BCZR, §502.1. The footprint of the garage will not change and therefore the size of the accessory apartment will not exceed 1,200 sf.

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

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 proposed in law apartment should be granted as it meets the requirements of the BCZR. The detached garage is an existing structure in the rear of the Property which is owned by the Petitioner, and the Petitioner and his family reside in the home. The proposed accessory apartment in the garage is for the Petitioner's mother-in-law who currently resides in the home but needs independent living space on one floor. I find the detached garage meets the definition of 'accessory apartment' under BCZR, §101 as Ms. Quinonez is related by

marriage to the Petitioner. The detached garage measures 900 sf. which is less than the required 1,200 sf. under BCZR, §400.4.B.2. Based on the testimony, the proposed accessory apartment will not have a separate utility meter, or water and sewerage services; those services will remain connected to the house under BCZR, §400.4.B.4. Petitioner has executed and will record in the Land Records of Baltimore County, the required Declaration of Understanding pursuant to BCZR, §400.4.C. Based on the evidence presented, I find that the proposed accessory apartment can be granted within the spirit and intent of the BCZR.

VARIANCE

With respect to the requested variance, a variance request involves a two-step legal analysis, 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).

I find that the Property is unique in that it abuts a 5 ft. wide land area otherwise described as a ‘5 ft. Reservation’ on the Plat of Overlea Hills. (Pet. Ex. 3). Based on the unrefuted testimony of Mr. Dietz, this Reservation was never constructed as an alley, nor was it dedicated to the County. Accordingly, I do not find sufficient evidence that this Reservation is actually an ‘alley’ and it clearly is not used as such. In this regard, I find that the Petitioner does not need variance relief under BCZR, §400.2. In regard to variance relief from the required rear and side yard setbacks in BCZR, §400.1, and the height of the detached garage in BCZR, §400.3 as a maximum 15 ft. tall, this detached garage is preexisting as having been built in or about 1942, prior to the enactment of the BCZR. It sits 1.3 ft. +/- from the side yard boundary line and 0 ft. from the rear Property line.

It is 19 ft. tall. The Petitioner is not expanding the footprint but only making interior renovations to make the garage livable for his mother-in-law. Requiring this concrete structure to be moved off of the side or rear property lines, and/or reducing its height, for this temporary use, would present unreasonable conditions for the Petitioner. As such, I find that if the variance relief were denied, the Petitioner would suffer a practical difficulty and unreasonable hardship because he would be unable to renovate the existing garage to create an in-law apartment for Ms. Quinonez and otherwise provide for her needs particularly in later years.

THEREFORE, IT IS ORDERED this 19th day of **August, 2021**, by this Administrative Law Judge that the Petition for Special Hearing from the Baltimore County Zoning Regulations (“BCZR”) §500.7 to approve an Accessory (In-Law) Apartment to be located within an existing accessory building (garage) on the same lot as homeowner's single-family dwelling is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance from the BCZR § 400.1 to approve an accessory building (garage) with side setbacks of 1.3 ft. in lieu of the required 2.5 ft. ft. side and rear setbacks, and the accessory building (garage) height of 19 ft. in lieu of the required 15 ft, be, and they are each hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance from the BCZR § 400.2, be and it is hereby **MOOT** for the reasons set forth herein.

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 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, Petitioner would be required to return the subject property to its original condition.
2. The accessory apartment shall not be used for commercial purposes.

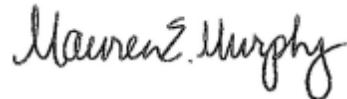
3. The accessory apartment shall not be converted into a second dwelling beyond the scope of BCZR, §400. The accessory apartment shall only be utilized by the person named in the use permit, and may not be used by any person, other than the Petitioner, for any other reason (including family members). When the accessory apartment is no longer occupied by any person(s) 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.

4. The accessory apartment shall not have separate utility, gas and electric and/or water/sewerage connections or services. All services shall connect to the house.

5. Prior to the issuance of the use permit, Petitioner shall file and record at his expense, an executed and notarized Declaration of Understanding, along with a property description and a site plan showing the proposed improvements, along with a copy of this Order, in the Land Records of Baltimore County, and file a copy of the same with the Department of Permits, Approvals and Inspections.

6. Petitioner 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(s) occupying the accessory apartment.

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



MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm