

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(2025 Jolly Road) *	OFFICE OF
3 <sup>rd</sup> Election District	
2nd Council District *	ADMINISTRATIVE HEARINGS
Leah C. Lewis-Garber & Jeffrey A. Garber	
<i>Legal Owners</i> *	FOR BALTIMORE COUNTY
Petitioners *	<b>Case No. 2020-0213-SPHA</b>
* * * * *	

**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 Leah C. Lewis-Garber & Jeffrey A. Garber legal owners (“Petitioners”) for the property located at 2025 Jolly Rd., Pikesville (the “Property”). The Special Hearing relief was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“BCZR”), to approve a proposed addition to an existing dwelling that will be used as an accessory in-law apartment, a garage, and additional bedrooms and bathrooms. Variance relief was also requested from BCZR § 400.4.A.1(a) to approve a proposed addition to an existing dwelling to be used as an accessory in-law apartment that will be 40% (1,065 sq. ft.) of the overall floor area of the existing floor area, which is 2,680 sq. ft., in lieu of the required maximum of one-third (33% x 2,680 = 884 sq. ft.) of the overall floor area of the existing dwelling, and from BCZR, §1B02.3.B to approve a proposed addition to an existing dwelling with a side setback of zero (0) ft. and a sum of 15.8 ft. in lieu of the required minimum of 15 ft. and a sum of 40 ft.

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. Petitioner, Leah C. Lewis-Garber and her father-in-law and mother-in-law, Lawrence Olivia and Karen Olivia, appeared in support of

the requests. Herbert Burgunder, III, Esquire represented the Petitioners. There were no Protestants or interested persons in attendance.

Zoning Advisory Committee (“ZAC”) comments dated September 17, 2020 and November 9, 2021 were received from the Department of Planning (“DOP”) which agency opposed the requested relief. There were no ZAC Comments from Department of Environmental Protection and Sustainability (“DEPS”) or Development Plans Review.

The Property is approximately 26,910 sq. ft. As shown in the aerial photograph, it is improved with a 2,680 sq. ft. ranch style home comprised of a 1,780 sq. ft. living area and a 900 sq. ft. finished basement, which was constructed in or about 1976, and was angled differently toward Jolly Rd. than other homes in the neighborhood. (Pet. Ex. 5). The street view of the rear of the home shows that it was built into the hill of the side yard. (Pet. Ex. 6 - originally contained in the file). The Property is zoned Density Residential (DR 2). (Pet. Ex. 2). As presented in the aerial photograph, the Property is oddly shaped with mature trees consuming the rear yard. (Pet. Ex. 5).

The Petitioners propose to construct a 2-story addition onto their home with an attached 2-car garage. (Pet. Ex. 1). One corner of the proposed garage will be setback one (1) ft. from the Property line with 2027 Jolly Rd. (the Engels). (Pet. Ex. 1). According to the Site Plan, the ground level/basement of the addition or 1,065 sq. ft., is proposed to be used as the in-law apartment for the Olivias. (Pet. Ex. 1). Mr. Olivia, who is in the construction business, plans to build the addition. In addition to the existing dwelling measuring 2, 680 sq. ft., the new first floor addition or 852 sq.ft., as well as the new 2-car garage measuring 536 sq.ft., will be occupied and used by the Petitioners and their expanding family. Floor plans of the proposed addition with each floor were submitted. (Pet. Ex. 3). The floor plans show a 2-person elevator from the garage

level to the in-law apartment. It also shows that the in-law apartment will have 2 bedrooms, one bathroom, a kitchen area and living room. (Pet. Ex. 3-A). Windows will be installed for the in-law suite as shown elevations. (Pet. Ex. 3-C).

The first floor plan to be used by the Petitioners labels certain rooms as ‘suite/apt1’ and ‘guest/care taker room.’ (Pet. Ex. 3-B). Ms. Lewis-Garber explained that the first floor plan was originally designed as an in-law suite for her father. However, he unfortunately passed away prior to this approval. She confirmed that, notwithstanding these labels, they will use the first floor addition and garage for her family’s use and that it will not be rented as apartments. Mr. Olivia explained that the materials on the addition will match the materials on the existing house. He also added that one tree which is dead must be removed in order to construct the addition.

#### 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). And, “the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations.” *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016).

Based on the testimony and exhibits, I find that the Petition for Special Hearing for an accessory apartment contained on the ground level of the proposed addition, will comply in all respects with BCZR, §400.4.A.

As required by BCZR, §400.4.A.1.c, the evidence was that the in-law apartment will connect to the existing electric, utility, water and sewer in the home. The proposed use will not be detrimental to environmental or natural resources as there is only 1 tree which would have been removed without the addition because, according to the Petitioners, it is dead.

Petitioners have executed and will file in the Land Records of Baltimore County a Declaration of Understanding as contained in the file which outlines compliance with BCZR, §400.4. The proposed accessory apartment will be used exclusively by the Olivias (Mr. Garber's mother and her husband) and therefore, it meets the definition of 'accessory apartment' under BCZR, §101 and complies with BCZR, §400.4.A.1.b. Given the limitation as a temporary use for people related by blood or marriage, I find that the proposed in-law apartment on the ground floor of the addition will not be detrimental to the health, safety or general welfare of the surrounding community. In-law apartments are consistent with the DR2 zone as contemplated in BCZR, §400.4. An accessory apartment within the same home where the Petitioners' reside with their family, will be useful to this extended family in the event that the Petitioners are in need of assistance in their later years.

#### 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 irregularly shaped and the home, constructed in 1976 was built into the side of a hill and was not set parallel to Jolly Rd. These unique features make constructing an addition and garage challenging. In particular, because the house sits at an odd angle, one corner of the proposed garage needs to be within 1 ft. of the Property line rather than the required 15 ft. under BCZR, §1B02.3.B. Because the Petition seeks Variance relief for a zero foot setback from the Engels Property line, the DOP objected to the variance relief. This Petition appears to be in error and/or was changed from the initial filing because the Site Plan reveals a 1 ft. setback. I find that the 1 ft. setback for the Petitioners' garage is unavoidable due to the positioning of the house. Given that the Engels and Petitioners have agreed to execute a maintenance agreement and given that the one (1) dead tree located on the Petitioners' Property will be removed prior to construction, this requested variance relief will not be detrimental to the Engels or to their successors in title.

In regard to requested Variance relief to approve an in-law apartment that will be 40% (1,065 sf) of the existing overall floor area (2,680 sf) in lieu of the required maximum 1/3 of the overall floor area, the DOP calculations and objection to the requested relief is understandable. It was not until the testimony was taken and the exhibits were reviewed at the hearing that the proposed plan as to which spaces would be used by the Olivias and by the Petitioners, became clearer. In its November 9, 2021 ZAC Comment, DOP used 1,780 sf above grade as the floor area and calculated the proposed addition as 1,625 sq. ft. I agree with the DOP that BCZR, §400.4.A is not the model of clarity when considering a new addition to an existing home, part of which will include an in-law apartment. However, I interpret the 'overall floor area of the dwelling' to include

the existing dwelling, the new addition, the new garage and the proposed in-law apartment spaces as follows:

2,680 sq. ft. - existing  
1,065 sq. ft. – new in-law apartment  
852 – new first floor  
536 – new garage  
5,133 sq. ft.

Using the 5,133 sq. ft., overall floor area, the 1,065 sq. ft., in-law apartment is only 1/5 (20%) of the overall floor area. Accordingly, this variance relief is not needed.

With regard to the requested Variance relief for the side yard setback, I find that the peculiar placement of the house on the Property is the cause of the need for a 1 ft. setback at one corner of the garage. Because that corner is a garage and not a room occupied by the Petitioners or their family members, I do not see a detrimental effect on the Engels' home which is still 22.7 feet away from the Property line. Moreover, the Engels support of this relief and willingness to enter into a maintenance agreement, eliminates any concern of injury to this adjacent property. Having heard the evidence, it is now clear that the in-law apartment contained on the ground floor and almost entirely in the rear yard, this will not interfere with the Engels' use and enjoyment of their property.

THEREFORE, IT IS ORDERED this 29<sup>th</sup> day of **November, 2021**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to BCZR, §500.7 to approve an accessory in-law apartment (1,065 sf) within a proposed addition to an existing dwelling, be, and it is hereby **GRANTED**; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to BCZR, §400.4.A.1(a) to approve a proposed addition to an existing dwelling to be used as an accessory in-law apartment that will be 40% (1,065 sq. ft.) of the overall floor area of the existing

floor area, which is 2,680 sq. ft., in lieu of the required maximum of one-third (33% x 2,680 = 884 sq. ft.) of the overall floor area of the existing dwelling, be, and it is hereby **DISMISSED**; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from BCZR, §1B02.3.B to approve a proposed addition to an existing dwelling with a side setback of one (1) ft. and a sum of 15.8 ft. in lieu of the required minimum of 15 ft. and a sum of 40 ft. be, and they are 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 in-law 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 persons named in the Declaration of Understanding and may not be used or occupied by any person other than those persons listed 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.
4. The accessory apartment shall not have separate utility, gas and electric and/or water/sewerage connections or services.
5. 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 Proposed Architectural Floor Plans (Pet. Ex. 3A-3C), 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.
6. 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.

7. Petitioners shall execute and record in Land Records of Baltimore County, at their expense, a Maintenance Agreement with Peter and Bonnie Engel in accordance with this Opinion.

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