

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(11 Stone Spring Court)	*	OFFICE OF
1st Election District		
1st Council District	*	ADMINISTRATIVE HEARINGS
Richard & Stacey Sovero		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2021-0249-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petitions for Special Hearing and Variance filed on behalf of Richard & Stacey Sovero, legal owners (“Petitioners”) for the property located at 11 Stone Spring Court, Catonsville (the “Property”). The Special Hearing was filed pursuant to Baltimore County Zoning Regulations (“BCZR”), §400.4 to approve a proposed detached accessory use structure to be used as an in-law apartment. Variance relief was also requested from BCZR, §400.4.B.2 to permit the proposed detached accessory apartment building (in-law apartment) with 1,218 sq. ft., in lieu of the required 1,200 maximum sq. ft. ¹

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. Petitioner, Richard Sovero, appeared *pro se*, in support of the Petition. Michael Johnson, 15 Stone Spring Court testified in support of the Petitions. Michael Mohler, Chief Administrator for Baltimore County Liquor Board, was also in attendance in support of the Petitioners.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”), Department of Planning (“DOP”) and

¹ An Amended Petition for Zoning Relief was filed and is contained in the file.

Development Plans Review (“DPR”) which agencies did not oppose the requested relief.

The Property is approximately 1.168 acres +/- (50,878.08 sq. ft.) and is improved with a 2-story home with an attached 2-car garage. A site plan was prepared by D.R.S. & Associates, lands design consultants (the “Site Plan”). (Pet. Ex.1). The Property was created as a flag lot (Lot A-6) on the Plat of Foxhall Farm with the original Healy Family farm house (Lot A-1) remaining which can be seen in the photographs. (Pet. Exs. 4A, 4K, 7). It is a zoned Density-Residential (DR2). (Pet. Ex. 4A). Street view photographs depict an attractive single family home, accessed via a long, common driveway, with a shed and in-ground pool both in the rear yard. (Pet. Exs. 1, 4B-4H).

Mr. Sovero testified that he and his wife, Stacey Sovero, reside in the home along with their son and his growing family. Petitioners desire to construct a detached accessory structure in the side and rear yards for the Petitioners to reside in, thereby creating more space for all family members to continue to be able to use and enjoy the same Property. Toward that end, Petitioners have executed and will file a Declaration of Understanding. (Pet. Exs. 3A-3D). The accessory structure is proposed to be built on a cleared area as shown in the photograph and which has a rise in topography as shown on the Site Plan. (Pet. Exs. 1, 4G).

It was noted that the Petition for Special Hearing listed the in-law apartment/accessory structure as measuring 1,218 sq. ft., in total, being only 18 sq. ft., more than the permitted maximum size. However, the Zoning Plan for Special Hearing states that the total square footage is 1,836 sq. ft., as it includes the finished living area of 1,218 sq. ft., bathroom/storage space of 90 sq. ft., as well as an attached 2-car garage of 528 sq. ft., (Pet. Exs. 6, 8). This total square footage is also consistent with the DOP’s calculations as contained in the DOP ZAC Comment contained in the file. It was also highlighted at the hearing that the Site Plan shows the accessory structure

as being located in not only the rear yard, but also in the side yard. (Pet. Exs. 1, 6). As a result of these discrepancies and the need for additional zoning relief, Petitioners submitted an Amended Petition for Zoning Relief which is contained in the file.

Floor plans were provided showing the proposed detached structure with agricultural type design including stone masonry at the base of the building, an open air porch on second floor, and barn-style garage doors, which are all in keeping with a higher quality of design of homes in the neighborhood. (Pet. Exs. 2A, 2B). Petitioners will be required to submit architectural drawings to the DOP prior to obtaining a building permit. Letters of support were provided by adjacent property owners. (Pet. Exs. 5A, 5B, 5C). Mr. Sovero acknowledged that the proposed structure will not have separate utility, electric, water or sewer connections but will tie into the existing lines in the house.

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 in the proposed detached structure, will comply in all respects with BCZR, §400.4, §502.1 and §400 (except for variance relief requested as discussed below).

In regard to the required Special Exception factors in BCZR, §502.1, I find that the proposed use is within the spirit and intent of the BCZR, and will not cause harm to the public health, safety or general welfare, particularly in light of the support of the adjacent property owners. I find that there will be no increase in traffic, no congestion of the land as the same number of people and cars currently park at the Property. There will be no interference with light or air, in that the adjacent properties are not in close proximity to the structure. Because this is new construction, it will have to meet all fire and safety codes and thus, there will not be any hazard from fire, panic or other danger. There will not be any interference with adequate public facilities or public improvements as the accessory structure will tie into the existing electric, utility, water and sewer in the home. The proposed use will not be detrimental to environmental or natural resources as no trees or vegetation are being removed.

The Petitioners have executed and will file in the Land Records of Baltimore County the Declaration of Understanding (Pet. Ex. 3A-3D) which outlines compliance with BCZR, §400.4. The proposed accessory apartment is for the Petitioners who currently reside in the home with their son and his family. Therefore, I find the accessory structure meets the definition of ‘accessory apartment’ under BCZR, §101. Given the size of the Property, separation from adjacent properties, 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. In-law apartments are consistent with the DR2 zone as set forth in BCZR, §400.4 and therefore

satisfy BCZR, §502.1.G. An accessory apartment on the same Property where the Petitioners' son and his family live, will be useful to this extended family in the event that the Petitioners are in need of assistance in their later years. 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 as required under BCZR, §400.4.B.4.

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, flag shape. I find that due to its uniqueness, if strict compliance with the BCZR were required, Petitioners would suffer a practical difficulty and unreasonable hardship because they would not be able to construct a modest sized, in-law apartment. With regard to the Variance relief for a 1,836 sq. ft., structure rather than the required 1,200 sq. ft., structure, I find that, with these specific facts, there will be no injury to the health, safety or general welfare because again, there are no homes in close proximity, and there is adequate space within the Property boundaries for the structure while meeting the required setbacks under BCZR, §400. It is clear from the Site Plan that the majority of the proposed structure will be in the rear yard, and that only part of the front façade and attached garage will extend into the side yard. I do not find that the accessory structure into the side yard will adversely affect the adjacent property as the Site Plan shows it to be 111 ft. +/- away. Finally, with regard to the proposed height not to exceed 24 ft., this height is necessary in order that the roof pitch of

the accessory structure matches the roof pitch of the home. Accordingly, as a result of the evidence presented, I 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 adjacent property owners.

THEREFORE, IT IS ORDERED this 29th day of **November, 2021** by this Administrative Law Judge, that the Petition for Special Hearing §400.4 to approve a proposed detached accessory use structure to be used as an in-law apartment be, and it is hereby, **GRANTED**; and

IT IS FURTHER ORDERED that Variance relief from BCZR, §400.4.B.2 to permit a proposed detached accessory structure (in-law apartment) with a total of 1,836 sq. ft., in lieu of the required 1,200 maximum sq. ft.. be, and it is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Variance relief from BCZR, §400.4.A.1.a to permit a proposed detached accessory structure (in-law apartment) with more than 1/3 of the overall floor area of the dwelling or 2,000 sq. ft., whichever is less, be, and it is hereby **DISMISSED** as that Section only applies to in-law apartments contained within an existing home; and

IT IS FURTHER ORDERED that the requested Variance relief from BCZR, §400.1 to permit a proposed detached accessory structure (in-law apartment) using both the side and rear yards in lieu of the required rear yard only, be, and it is hereby **GRANTED**; and

IT IS FURTHER ORDERED that the requested Variance relief from BCZR, §400.3 to permit a proposed detached accessory structure (in-law apartment) to exceed the required 15 ft. height limitation, but not to exceed 24 ft., be, and it 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 DOP, 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 but will tie into the existing connections in the house.

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, a copy of the proposed detailed and Floor Plan and the Zoning Hearing Plan for Special Hearing (Pet. Ex. 2B, 6) (both of which were prepared by D.R.S. & Associates, land design consultants) 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