

| | | |
|---|---|-------------------------------|
| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| (3522 Glenwood Road) | * | OFFICE OF |
| 15 th Election District | | |
| 6 th Council District | * | ADMINISTRATIVE HEARINGS |
| David J. & Shellie H Krajewski | | |
| <i>Legal Owners</i> | * | FOR BALTIMORE COUNTY |
| Petitioners | * | Case No: 2021-0028-SPH |
| * * * * * | | |

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 David J. and Shellie H. Krajewski legal owners (“Petitioners”). The Special Hearing from the Baltimore County Zoning Regulations (“BCZR”) § 500.7 to permit an accessory building to be built and used as an “in-law” apartment. Also requested is a Variance from BCZR § 400.3 to allow an accessory structure with a height of 32 ft. in lieu of the permitted 15 feet.

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. The Petitioners, David and Shellie Krajewski appeared. Salvatore Crupi, the Professional Engineer that prepared and sealed the site plan assisted the Petitioners. The site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

There were no protestants or interested citizens in attendance. Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”). These agencies did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order.

The property is located on Frog Mortar Creek and is within the Chesapeake Bay Critical Area (“CBCA”), a Limited Development Area (“LDA”), and a Modified Buffer Area (“MBA”), as well as within a tidal floodplain. It is approximately 16,160 square feet and is zoned DR 3.5. Mr. Krajewski explained that there is an existing garage structure on the property that will be razed and replaced by the proposed accessory apartment, which will be occupied by Petitioners’ adult son. Mr. Crupi explained that the height variance was required because of the floodplain building requirements, which require the living space to be constructed a minimum of 9.5 feet above the flood elevations. He further noted that similar relief has been granted for several such structures in the neighborhood, including the adjacent property at 3520 Glenwood Road. (Case No. 2012-0223-SPHA).

Based on this record evidence I find that the special hearing relief can be granted within the spirit and intent of the BCZR provided that the ZAC comments are complied with, which will be a condition of this Order.

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 because it is waterfront and subject to the CBCA, LDA, MBA, and floodplain regulations and restrictions. Because of the floodplain restrictions the first floor of the structure (approximately 10 feet) cannot be used for living quarters, thus necessitating the requested height variance. If the variance were denied the Petitioners would suffer practical difficulty and hardship because they would be unable to build and occupy the proposed accessory structure. I find

that the variance can be granted within the spirit and intent of the BCZR and without causing harm to the public health, safety, or welfare – provided that the DOP and DEPS comments are complied with – which will be a condition of this Order. Further, as noted above, several similar structures have been approved in the neighborhood and this structure will therefore be compatible.

THEREFORE, IT IS ORDERED this **13th** day of **April, 2021**, by this Administrative Law Judge that the Petition for Special Hearing from the Baltimore County Zoning Regulations (“BCZR”) § 500.7 to permit an accessory building to be built and used as an (accessory in-law) apartment is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance if necessary from the BCZR § 400.3 to allow an accessory structure with a height of 32 ft. in lieu of the permitted 15 feet 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 make a part thereof.
- The proposed structure shall not be used for commercial purposes and shall not have a separate utility meter.
- A copy of this Order shall be filed in the Land Records of Baltimore County along with the Declaration of Understanding which was admitted as Petitioners’ Exhibit 4.

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