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|-------------------------------------|---|-----------------------------|
| <b>IN RE: PETITION FOR VARIANCE</b> | * | BEFORE THE                  |
| <b>(3706 Patapsco Avenue)</b>       |   |                             |
| 15th Election District              | * | OFFICE OF ADMINISTRATIVE    |
| 6th Council District                |   |                             |
| Francis D. Kemp, Jr. &              | * | HEARINGS OF                 |
| Elizabeth R. Kemp                   |   |                             |
|                                     | * | BALTIMORE COUNTY            |
| Legal Owners/Petitioners            |   |                             |
|                                     | * | <b>CASE NO. 2020-0290-A</b> |

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Francis D. Kemp, Jr., and Elizabeth R. Kemp (the “Petitioners”) for property located at 3706 Patapsco Avenue, Bowleys Quarters (the “Property”). The Petitioners are requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) §1B02.3.C.1 to permit a replacement dwelling with side yards of 5 ft. and 10 ft. and a with a sum side yard of 15 ft. in lieu of the required 10 ft. minimum, 15 ft. minimum and sum of side yard of 25 ft.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Francis D. Kemp, Jr. appeared at the hearing along with David Billingsley of Central Drafting & Design who prepared a site plan (the “Site Plan”). (Pet. Ex. 1). There were no opposing parties or interested citizens in attendance.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”) which indicates that the subject property is located within the Limited Development Area (“LDA”) and therefore afforestation for 4 trees is required. A ZAC comment was also received from the Department of Planning (“DOP”) which did not oppose the requested relief.

The Property is approximately 12,575 sf and is zoned DR 3.5. It is 50 ft. wide but is 254 ft. long on the north side and 249 ft. long on the south side. The Property is a waterfront lot on Frog Mortar Creek and improved with a pier and bulkhead. It was created as part of Long Beach Estates per Plat WPC No. 4 recorded in Land Records of Baltimore County on August 7, 1914. (Pet. Ex. 5). It is improved with a one-story dwelling built in 1913 which is not elevated above ground level. (Pet. Ex. 6). There is an existing shed (180 sf) near Patapsco Avenue. (*Id.*). The current home is not centered on the Property; it is located 5 ft. from the southern Property line. Mr. Billingsley explained that the proposal is to remove the existing one-story home and replace it with a 3-story dwelling with open deck.

Mr. Billingsley provided photographs along with a photo key. (Pet. Exs. 8A-8E). The adjacent property on the northern boundary is vacant. The adjacent home on the southern border is multi-story and was constructed more recently. Elevations of the proposed home were provided and show a 2 car garage on the ground level facing Patapsco Avenue and 1 garage bay facing the water. (Pet. Ex. 9). The ground level will be used to park vehicles and for storage. The replacement dwelling will be 3,559 sf. It will be constructed in the same footprint as the existing in that it will be located 5 ft. from the southern Property line as it has always existed but within 10 ft. of the northern boundary. There is no height variance needed. There is no construction within the 100-ft Chesapeake Bay Critical Area (“CBCA”) buffer.

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 asymmetrical and is improved with a single-story dwelling constructed in 1913 which was not centered on the Property but rather, built 5 ft. from the southern Property line. The Petitioners would suffer a practical difficulty if they were not able to build a replacement dwelling on this 50 ft. wide lot because the Property is located within a flood zone and the replacement home needs to be elevated above ground level. The replacement home will be built within the same 5 ft. setback from the southern Property line that has existed since 1913. I also find that the requested variance can be granted within the strict harmony of 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 29<sup>th</sup> day of **March 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from the Baltimore County Zoning Regulations (“BCZR”) § 1B02.3.C.1 to permit a replacement dwelling with side yards of 5 ft. and 10 ft. and a with a sum side yard of 15 ft. in lieu of the required 10 ft. minimum, 15 ft. minimum and sum of side yard of 25 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. Petitioners must comply with the DEPS and DPR ZAC comments, copies of which are attached hereto and made a part hereof.

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

A handwritten signature in black ink that reads "Maureen E. Murphy". The signature is written in a cursive style with a large, looped 'M' and 'P'.

MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm