

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(8208 Millers Island Road)	*	OFFICE OF
(Black Marsh Farms, LLC)		
15th Election District	*	ADMINISTRATIVE HEARINGS
7th Council District		
Michael & Terri Poleski	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>	*	
Petitioners	*	Case No. 2020-0113-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 Michael and Terri Poleski, legal owner (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”), to permit a proposed accessory structure (pole barn) with a building footprint larger than the building footprint of the primary structure. In addition, a Petition for Variance was filed pursuant to § 400.3, to permit a proposed accessory structure (pole barn) to have a height of 25 ft. in lieu of the maximum allowed height of 15 feet.

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. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Michael and Terri Poleski appeared in support of the requests. There were no protestants or interested persons in attendance. A Substantive Zoning Advisory Committee (“ZAC”) comment was received by the Department of Environmental Protection and Sustainability (“DEPS”) the property is located within the Chesapeake Bay Critical Area (“CBCA”) and is subject to Critical Area requirements. A copy of which is attached hereto and made a part hereof.

A ZAC comment was also received by the Department of Planning dated May 18, 2020, they do not oppose.

The property is approximately 1.2 acres and is zoned RC 5, BL. Mr. Poleski testified that he and his wife's principal residence, which is at another location, is prone to flooding. He testified that the subject property is *not* within a floodplain but acknowledged it is within the Chesapeake Bay Critical Area (CBCA). He therefore wants to construct the proposed garage on this property in order to store several 70s vintage cars that he owns. They need the extra height for storage above the ground floor. The footprint of the proposed structure is larger than that of the existing residence on the property, which necessitates the special hearing relief.

Special Hearing

The subject property is over an acre and the combined footprint of the existing residence and the proposed garage structure will occupy a small fraction of the property, and will therefore comply with the CBCA lot coverage regulations. Further, as noted by the DOP, the structure will be well screened from the surrounding properties, including the adjoining DNR land. I therefore find that the special hearing relief is appropriate.

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 bordered by DNR land. It is also within the CBCA. It is therefore unique. If variance relief is denied, Petitioners will experience a practical difficulty

or hardship because they will be unable to build the proposed garage. I find that the variance is within the spirit and intent of the BCZR and will not harm the public health, safety, or welfare.

THEREFORE, IT IS ORDERED this 29th day of **September, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”), to permit a proposed accessory structure (pole barn) with a building footprint larger than the building footprint of the primary structure be and hereby is GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to § 400.3, to permit a proposed accessory structure (pole barn) to have a height of 25 ft. in lieu of the maximum allowed height of 15 feet.be and 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 pole barn shall not be used for residential or commercial purposes and shall not have a separate utility meter, nor any plumbing.
3. Petitioners must comply with the DOP and DEPS ZAC comments, copies of which are attached hereto and make a party thereof.

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