

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(3812 Chestnut Road) *	OFFICE OF
15 <sup>th</sup> Election District	
6 <sup>th</sup> Council District *	ADMINISTRATIVE HEARINGS
John and Elizabeth Johlitz, <i>Legal Owner</i>	
Petitioners *	FOR BALTIMORE COUNTY
	<b>Case No. 2014-0061-SPHA</b>

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by John & Elizabeth Johlitz, the legal owners. The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”): (1) for a waiver to expand an existing garage in the front yard (22 ft. x 24 ft.) with a 22 ft. x 24 ft. addition for a total of 1,056 sq. ft. in lieu of the maximum 900 sq. ft. in a tidal floodplain; (2) to approve a completed garage which will be larger than the principal dwelling, and to amend the previously approved site plans in Case Nos.: 2000-0344-A and 2010-0213-A. The Variance petition seeks relief from B.C.Z.R., §400.3 to permit an accessory structure (garage 22' x 24' existing in the front yard and a proposed 22' x 24' addition) with a height of 22 feet in lieu of the required 15 feet. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was John & Elizabeth Johlitz. The file reveals that the Petition was advertised and the site was posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance, and the file does not contain letters of protest or opposition.

Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Department of Environmental Protection and Sustainability (DEPS) and the Bureau of Development Plans Review (DPR).

The subject property is 10,200 +/- square feet in size and is zoned RC-5. The property is improved with a small single family dwelling (828 SF) and a detached garage (22' x 48', or 1,056 SF). In 2010, former Deputy Zoning Commissioner Bostwick granted variance relief for the construction of the garage, with a height of 18' in lieu of the maximum 15'. Case No.: 2010-0213-A. It was later discovered the height of the garage is in fact 22', which necessitated the filing of another variance petition. The Petitioners were also instructed to seek Special Hearing relief given that the garage will be (slightly) larger than the single family dwelling, and will also exceed (by 150 SF) the 900 SF area limitation in a tidal floodplain.

As noted above, the garage is an existing condition, and I will therefore grant the Special Hearing relief. The Petitioners used siding on the garage to match their home, and they indicated their neighbors expressed support for the project, which (given the small dwelling) is used for family storage, yard equipment and a golf cart.

Based upon the testimony and evidence presented, I will also grant the petition for variance. To obtain variance relief a petitioner must show:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

The Petitioners have met this test. The lot is small and narrow and is therefore unique. The Petitioners would experience a practical difficulty if the regulations were strictly interpreted, since they would need to dismantle the existing garage. The grant of relief will not jeopardize the public's health, safety and welfare.

Pursuant to the advertisement, posting of the property, and public hearing, and after considering the testimony and evidence offered, I find that Petitioners' special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED this 18<sup>th</sup> day of November, 2013, by this Administrative Law Judge, that the request for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."): (1) for a waiver to expand an existing garage in the front yard (22 ft. x 24 ft.) with a 22 ft. x 24 ft. addition for a total of 1,056 sq. ft. in lieu of the maximum 900 sq. ft. in a tidal floodplain; (2) to approve a completed garage which will be larger than the principal dwelling, and to amend the previously approved site plans in Case Nos.: 2000-0344-A and 2010-0213-A, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §400.3 to permit an accessory structure (garage 22' x 24' existing in the front yard and a proposed 22' x 24' addition) with a height of 22 feet in lieu of the required 15 feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioners or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. No commercial activities of any kind shall be permitted in the proposed accessory building.
4. Petitioners must comply with the ZAC comments of DPR (dated 9-23-13) and DEPS (dated 10-22-13).

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

JEB/sln

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County