

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(330 Townsend Road)	*	OFFICE OF
15 <sup>th</sup> Election District		
7 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
Mark L. Markell		
Petitioner	*	FOR BALTIMORE COUNTY
	*	<b>Case No. 2015-0300-SPHA</b>

\* \* \* \* \*

**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 the legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to permit an apartment in an accessory building (formerly a garage) for a family member; and (2) to amend the previous case opinion (Case #07-491-A) which allowed a height (for the accessory building) of 20 ft. in lieu of the required 15 ft. In addition, a Petition for Variance pursuant to B.C.Z.R. § 400.3 to permit an accessory building (formerly a garage) that is being requested as an accessory apartment to have a height of 24 ft. in lieu of the required 15 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Mark L. Markell. Bruce E. Doak, a licensed surveyor, assisted the Petitioner. The Petitioner’s sister and her husband, who are neighbors, attended and opposed the request. They contend that drainage from Petitioner’s property has caused flooding and damage to their home, and they presented a series of photographs depicting these conditions. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP), which indicated that agency did not oppose the request provided all safety and inspection requirements are satisfied.

This matter is currently the subject of a violation case (Case No. CC1505933) before the Office of Administrative Hearings. The violation case has been stayed pending the outcome of this zoning hearing.

### PETITION FOR SPECIAL HEARING

The Baltimore County Council enacted legislation in 2011 which permits under certain circumstances accessory apartments for family members. These were formerly referred to as “in law apartments.” The requirements for such an apartment are set forth at B.C.Z.R. §400.4, and based on the testimony I believe Petitioner complies with these requirements. The apartment is occupied by Petitioner’s mother, who is elderly and has had a series of medical problems in the recent past. Petitioner submitted a notarized Declaration of Understanding (Exhibit #4) which contains the requisite information and must be filed in the County land records office. As such, the petition for special hearing will be granted.

### VARIANCE

To obtain variance relief requires a showing that:

- (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).

Petitioner has met this test. The garage was constructed several years ago by contractors, and thus Petitioner must contend with existing site conditions. If the B.C.Z.R. were strictly interpreted, Petitioner would experience a practical difficulty, given he would be required to raze or reconfigure the garage. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of County agency opposition.

I am mindful of the concerns raised by the neighboring owners. Unfortunately, under Maryland law an upper owner of property is not liable for water draining across lower property, provided the upper owner does not collect the water into a single channel such that it substantially increases the flow upon the lower land. Kennedy Dev. Co. v. Snure, 212 Md. 369, 376 (1957). Here, there was no evidence that the Petitioner had done so, and the flow of water appears to follow the natural topography. One of the neighbors' photographs did reveal that the Petitioner's gutters and downspouts overflow during storm conditions, and a condition will be included in the Order below requiring those issues to be addressed.

THEREFORE, IT IS ORDERED this 15<sup>th</sup> day of **September, 2015**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) as follows: (1) to permit an apartment in an accessory building (formerly a garage) for a family member; and (2) to amend the previous case opinion (Case #07-491-A) which allowed a height of 20 ft. in lieu of the required 15 ft., 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 existing accessory building with a height of 24 ft. in lieu of the required 15 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his 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, Petitioner would be required to return the subject property to its original condition.
2. Petitioner must within 60 days of the date hereof clean and repair as necessary all gutters and downspouts at the subject property, and

must ensure that the downspouts do not convey water onto the adjoining property at 328 Townsend Road.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:sln