

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
NW side of Glenwood Road; 450 feet	*	OFFICE OF
SW of the c/l of Oakdean Road		
15 th Election District	*	ADMINISTRATIVE HEARINGS
6 th Council District		
(3520 Glenwood Road)	*	FOR BALTIMORE COUNTY
 Brandon and Samantha Brookshire	*	CASE NO. 2012-0223-SPHA
<i>Petitioners</i>		

* * * * *

ORDER AND OPINION

This matter comes to the Office of Administrative Hearings (OAH) as Petitions for Special Hearing and Variance filed by the legal owners of the property, Brandon and Samantha Brookshire. The Petitioners are requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve an accessory building to be built and used as an in-law apartment. Petitioners are also requesting Variance relief from Section 400.3 of the B.C.Z.R. to permit an accessory structure with a height of 36 feet in lieu of the permitted 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 held for this case was Petitioner Brandon Brookshire. There were no Protestants or other persons present, and the file does not contain any letters of opposition or protest. In fact, Petitioner indicated that all of his neighbors were supportive of his plans, and he indicated that two neighbors directly across the street are currently constructing similar in-law apartments.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Planning dated March 28, 2012, which state:

ORDER RECEIVED FOR FILING

Date 4-30-12

By [Signature]

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The petitioner requests a special hearing to permit an accessory building to be built and used as an in-law apartment and a variance to permit an accessory structure with a height of 36 feet in lieu of the permitted 15 feet. The subject proposal is subject to Section 400 of the Baltimore County Zoning Regulations, with that the following items shall be addressed before the requested variance and/or special hearing can be granted:

1. The site plan accompanying the subject petition shows an existing garage on the subject property. However, the petition indicates that the structure is to be built. Clarify whether the structure is existing or proposed.
2. The petitioner proposes that the accessory structure is going to be 36 feet in height, but does not indicate area of apartment. According to Section 400 of the BCZR, an accessory structure must be subordinate to the principle structure on the site. This provision refers to building footprint and building height. Clearly indicate the height of the principle structure so that the aforementioned condition can be evaluated.
3. Based on the information provided, it appears that the petitioner requests a rather large accessory structure. Provide architectural elevations of all side of the building to be constructed. Building materials should be similar in nature to the principle structure on the site.
4. Typically living quarters, kitchen and bathroom facilities are not permitted in accessory structures. However, since this proposal includes a special hearing so that the accessory structure can be used as an in-law apartment the aforementioned is allowed. The installation of living quarters, kitchen and bathroom facilities should be temporary in nature and able to be easily removed. Section 400 of the BCZR states that the accessory apartment shall only be utilized by immediate family members as defined in Section 101 and may not be leased or rented or used by any person other than an immediate family member for any other reason.
5. The size of the accessory apartment within an accessory structure may not exceed 1,200 square feet. With that being said, provide the total square footage of the proposed accessory apartment and show on the plan.
6. The accessory apartment may not have separate utility meters, such as gas and electric service.

Comments were received from the Bureau of Development Plans Review dated March 30, 2012. The comments indicate that the first floor or basement must be at least one foot above the flood plain elevation in all construction, and the building must be designed and adequately anchored to prevent flotation or collapse and constructed of materials resistant to flood damage. Flood-resistant construction must be in accordance with the Baltimore County Building Code which adopts the International Building Code.

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Date 4-30-12 2

By 

Comments were received from the Department of Environmental Protection and Sustainability dated April 19, 2012 which state:

EPS has reviewed the subject zoning petition for compliance with the goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, we offer the following comments:

1. The subject property is located within a Limited Development Area (LDA) and a Buffer Management Area (BMA) and is subject to Critical Area requirements. The applicant is proposing to allow an accessory structure to exceed the height limits. The lot is waterfront and contains the existing dwelling, garage, and driveway. The proposed in-law apartment is not shown on the plan and dimensions are not given. Lot coverage on the entirety of this property is limited to 31.25% (5,310 square feet), with mitigation required for lot coverage over 25% (4,248 square feet). If the applicant can meet the lot coverage requirements, BMA requirements, and the 15% afforestation requirements, the relief requested by the applicant will result in minimal impacts to water quality.
2. This property is waterfront. If lot coverage, BMA, and afforestation requirements are met, that will help conserve fish habitat in the Chesapeake Bay.

This office is unable to determine whether the applicant's proposal is consistent with this goal. Provided that the applicants meet the requirements stated above, the relief requested will be consistent with established land-use policies.

Testimony and evidence revealed that the subject property is located in the Bowleys Quarters area, and is 16,992 square feet in size. Petitioner bought the home four years ago, and wants to have his parents live on site. The Petitioner's home is 34 feet x 36 feet, and the proposed in-law apartment would be subordinate in size (30 feet x 30 feet) to meet the requirements of Bill 49-11 and Chesapeake Bay Critical Area regulations. The living quarters in the proposed structure would be 30 feet x 30 feet (1 floor) plus some small area for storage in the loft portion of the "A-frame" structure, which also complies with Bill 49-11. Finally, Petitioner confirmed the main dwelling and proposed accessory structure would both be served by one electric/utility meter.

As to the variance request, I am persuaded to grant the requested relief. I find special

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By ps

circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The property is waterfront, and is subject to flood plain and CBCA regulations. As such, the first floor (approximately 11 feet) cannot be used for living quarters, which explains why the Petitioner seeks to build to the 36 feet height. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner, given that the Petitioner's parents would be unable to reside with their son and his wife and children.

I further find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety, and general welfare. Thus, I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property and public hearing on these Petitions, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 30 day of April, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve an accessory building to be built and used as an in-law apartment, be and is hereby GRANTED;

IT IS FURTHER ORDERED that the Petition for Variance under Section 400.3 of the B.C.Z.R. to permit an accessory structure with a height of 36 feet in lieu of the permitted 15 feet, be and is hereby GRANTED.

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

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Date 4-30-12

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By jm

1. The Petitioners may apply for their building permit and may be granted same upon receipt of this Order, however the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.
2. Compliance with the ZAC comments made by the Bureau of Development Plans Review dated March 30, 2012, a copy of which is attached hereto and made a part hereof.
3. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability dated April 19, 2012, a copy of which is attached hereto and made a part hereof.
4. The in-law apartment use is subject to Bill 49-11 and all of the restrictions and conditions therein.
5. Petitioner must record among the Land Records of Baltimore County – and provide to Baltimore County evidence of such filing – the affidavit attached hereto.



JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:pz

ORDER RECEIVED FOR FILING

Date 4-30-12

By [Signature]

Declaration of understanding

This declaration of understanding (hereinafter referred to as "Declaration") is made on this 14th day of March 2012, by and between Brandon Brookshire and Samantha Brookshire (hereinafter referred to as the "Declarant") and the Department of Permits, Approvals and Inspections (hereinafter referred to as "PAI").

Recitals

- A. The Declarant(s) who is/are the owner(s) of this property has/have filed an application for a use permit and special hearing to: Remove existing garage and replace with a 30x30 accessory building to include an in-law apartment above ~~elevated above the~~ garage as to be out of the flood plan. Accessory building will be cantilevered over the said Garage/foundation 2 feet on each side.
The property being located at: 3520 Glenwood Rd. Middle River, Md 21220 and is particularly described by metes and bounds in Exhibit A (The Property) and Exhibit B (The use permit or hearing plans) attached hereto and made a part hereof. The property is Zoned DR 3.5 which is the particular zone in which the property is located.
- B. PAI (or) The Administrative Law Judge has approved the Declaration request to create an Accessory Apartment complete with dedicated Bathing and Cooking Facilities, located on this owner-occupied property. The accessory apartment will be the housing for: Paul Louis Brookshire and Deborah Anne Brookshire Parents of Brandon Brookshire. The other residents of the property are: Brandon Brookshire and Samantha Brookshire. Brandon Brookshire is the Son of Paul Brookshire and Deborah Brookshire. The use permit must be renewed with PAI every two years by filing a renewal on a PAI approved form, to be dated from the month of the initial approval.
- C. As a condition of approval of the Declarants(s) request, Bill No. 49-11 requires the filing of this Declaration among the Land Records of Baltimore County, to provide notice to any future owners, subsequent bona fide purchasers or users of the property that no part of any improvements or addition on the property may be used for separate living quarters and that all such improvements shall only be used as a single-family residence, unless otherwise approved by and at the discretion of PIA.

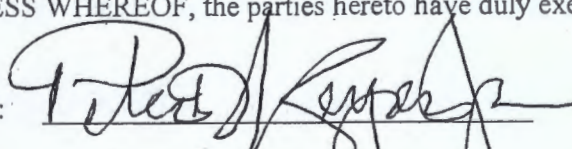
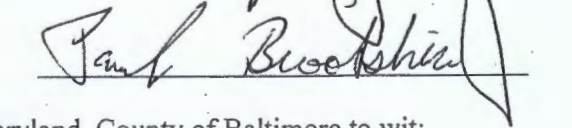
DECLARATION
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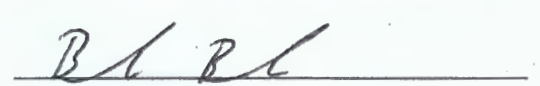
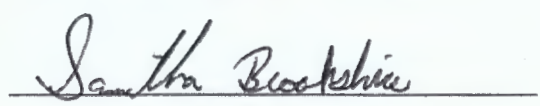
NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the Declarant(s) and PAI hereby declare as follows:

1. Any and all improvements now existing or to be constructed on the Property shall be used only as a single-family residence. No such improvements or additions shall ever be used as a separate living quarter or second residential unit. The kitchen for the Accessory Apartment will be constructed as part of the Property and shall be accessory to the principal use of the Property as a single-family residence. The Accessory Apartment shall house only the immediate family member(s) listed in this Declaration and it is not to be used as an independent resident unit, nor is it to be used for compensation, and it shall not be used by any other person or for any other reason. This use permit and this Declaration are subject to the order, conditions or restrictions of any required zoning hearing. The hearing order is to be made part of this Declaration when it is recorded in Land Records.
2. Once the Accessory Apartment is no longer occupied by the persons named in this Declaration or if the property is sold, or the use permit has not been renewed within the 2 year temporary use permit time limit, the use permit shall terminate, and any proposed changes in occupancy to the Accessory Apartment by the property owner or subsequent purchaser shall require a new request for a use permit.
3. Upon use permit termination:
 - A. In the Accessory Apartment in the principal dwelling, use permit termination requires removal of the second kitchen and the former Accessory Apartment space to be occupied by the Declarant(s) or subsequent purchaser.
 - B. In the Accessory Apartment in the accessory building requires removal of the kitchen and possibly other residential elements, at the discretion of PAI.
 - C. The Declarant(s) upon termination of the use permit will provide written notification to PAI for the closing of the Department file.
5. The covenants, conditions, and restrictions stated above shall run with and bind the Property and shall be enforceable by Baltimore County, MD and by the owners of all or any portion of the Property.
6. Enforcement of the Covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any of the covenants, either to restrain the violation or to recover damages.

IN WITNESS WHEREOF, the parties hereto have duly executed this Declaration under seal on the date first above written.

WITNESS:

State of Maryland, County of Baltimore to wit:

I HEREBY CERTIFY that on this 14th day of 2012, before the Subscriber, a Notary Public of State of Maryland, personally appeared

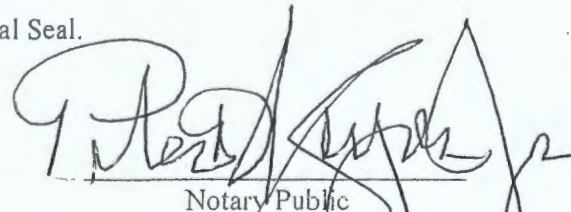
Brandon M. Brookshire

The declarant(s) herein, who is/are also the owner(s) of this property, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and who acknowledged that he/she/they executed for the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, have hereunto set my hand and Notarial Seal.

My Commission Expires:

8/17/2013


Notary Public

PAI ZR53

PETER D. KEYSER, JR
NOTARY PUBLIC, BALTIMORE COUNTY
STATE OF MARYLAND
My Commission expires August 17, 2013

Rev. 11/08/11

Exhibit A

Beginning for the same at the point on the South west side of Glenwood Rd, as laid out 50 feet wide said point being located 88 degrees 2 minutes 6 tenths of a mile from Bowleys Quarters road and the west side of Armstrong Creek/ Edwards Lane.

The Improvements being known as 3520 Glenwood Rd Middle River Md 21220.

Being the same lot of ground be deed dated May 2008 and record among the Land Records of Baltimore County conveyed by Brandon Brookshire and Samantha Brookshire.

State of Maryland Land Instrument
☐ **Baltimore City** ☐ **County:**

Information provided is for the use of the Clerk's Office for Assessments and Taxation, and County Financial Services.
 (Type or Print in Black Ink Only—All Capital Letters)

1	Type(s) of Instruments	☐ Check Box if addendum Intake Form is	
		Deed	Mortgage
2	Conveyance Type Check Box	Improved Sale	Unimproved Sale
		Arms-Length [1]	Arms-Length [2]
3	Tax Exemptions (if Applicable)	Recordation	
		State Transfer	
Cite or Explain Authority		County Transfer	

4	Consideration and Tax Calculations	Consideration Amount	
		Purchase Price/Consideration	\$
		Any New Mortgage	\$
		Balance of Existing Mortgage	\$
		Other:	\$
		Other:	\$
		Full Cash Value:	\$

5	Fees	Amount of Fees	Doc. 1
		Recording Charge	\$
		Surcharge	\$
		State Recordation Tax	\$
		State Transfer Tax	\$
		County Transfer Tax	\$
		Other	\$
		Other	\$

6	Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).	District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG	
		Subdivision Name		Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	SqFt/Acreage (4)
		Location/Address of Property Being Conveyed (2)						
		X 3520 Glenwood Rd Middle River MD 21220						Water Meter Account No.
		Other Property Identifiers (if applicable)						
		Residential ☐ or Non-Residential ☐ Fee Simple ☐ or Ground Rent ☐ Amount:						
		Partial Conveyance? ☐ Yes ☐ No Description/Amt. of SqFt/Acreage Transferred:						
		If Partial Conveyance, List Improvements Conveyed:						
		Doc. 1 - Grantor(s) Name(s)						
		Doc. 2 - Grantor(s) Name(s)						

7	Transferred From	Doc. 1 - Grantor(s) Name(s)		Doc. 2 - Grantor(s) Name(s)	
		X Brandon Brookshire Samantha Brookshire			
8	Transferred To	Doc. 1 - Owner(s) of Record, if Different from Grantor(s)		Doc. 2 - Owner(s) of Record, if Different from Grantor(s)	
		X Baltimore County			
		New Owner's (Grantee) Mailing Address			

9	Other Names to Be Indexed	Doc. 1 - Additional Names to be Indexed (Optional)	Doc 2 - Additional Names to be Indexed (Optional)

10	Contact/Mail Information	Instrument Submitted By or Contact Person		☐ Return to Contact Person ☐ Hold for Pickup ☐ Return Address Provided
		Name:	BRANDON BROOKSHIRE	
		Firm		
		Address:	3520 Glenwood Rd Middle River MD 21220	
		Phone: ()		

11 IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH INSTRUMENT

Circuit Court for
BALTIMORE COUNTY
Clerk of the Court,
JULIE L. ENSOR
COUNTY COURTS BUILDING
481 BOSLEY AVE. P.O. BOX 6754
TOWSON, MD 21285-6754
(410) 887-2601

Transaction Block:
Ref: BROOKSHIRE
DECLARATION/BY LAWS
IMP FD SURE
RECORDING FEE 20

SUBTOTAL:

TOTAL CHARGES:

PAYMENTS
CASH

TOTAL TENDERED:

Cashier: BC Reg # 8A02
Rcpt # 36114
Date: Nov 14, 2012 Time: 11:13 am

Ag. Tax/Other: