



JOHN A. OLSZEWSKI, JR.  
*County Executive*

PAUL M. MAYHEW  
*Managing Administrative Law Judge*  
MAUREEN E. MURPHY  
*Administrative Law Judge*

April 20, 2022

Lawrence E. Schmidt, Esquire – [lschmidt@sgs-law.com](mailto:lschmidt@sgs-law.com)  
Smith, Gildea & Schmidt, LLC  
600 Washington Avenue, Suite 200  
Towson, MD 21204

RE: Petitions for Special Hearing & Variance  
Case No. 2022-0027-SPHA  
Property: 1115 Cold Spring Road

Dear Mr. Schmidt:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), “a person aggrieved or feeling aggrieved” by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

A handwritten signature in black ink that reads "Paul M. Mayhew".

PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM:dlm  
Enclosure

c: Lawrence A. Kelly Sr., & Victoria Kelly – [vjkelly2@comcast.net](mailto:vjkelly2@comcast.net) & [vjkelly2@gmail.com](mailto:vjkelly2@gmail.com)  
Stephanie Euler /Klaben – [stepheuler@yahoo.com](mailto:stepheuler@yahoo.com)

|                                            |   |                                |
|--------------------------------------------|---|--------------------------------|
| IN RE: <b>PETITION FOR SPECIAL HEARING</b> | * | BEFORE THE                     |
| <b>&amp; Variance</b>                      |   |                                |
| (1115 Cold Spring Road)                    | * | OFFICE OF                      |
| 15 <sup>th</sup> Election District         |   |                                |
| 6 <sup>th</sup> Council District           | * | ADMINISTRATIVE HEARINGS        |
| Lawrence A. Kelly, Sr. & Victoria Kelly    |   |                                |
| <i>Legal Owners</i>                        | * | FOR BALTIMORE COUNTY           |
| <b>Petitioners</b>                         | * | <b>Case No: 2022-0027-SPHA</b> |

\* \* \* \* \*

### **OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Special Hearing and Variance filed by Lawrence A. Kelly, Sr., and Victoria Kelly (“Petitioners”) for the property located at 1115 Cold Spring Road (the “Property”). The Special Hearing was filed from the Baltimore County Zoning Regulations (“BCZR”) § 500.7, approve a nonconforming lot and improvements thereon, and for such other and further relief as may be deemed necessary by the Administrative Law Judge (“ALJ”) for Baltimore County. A Variance pursuant to the BCZR § § 1A04.3(2)(b), to approve a side yard setback of as little as 8.4 ft. in lieu of the required 50 ft., and for such other and further relief as may be deemed necessary by the Administrative Law Judge (“ALJ”) for Baltimore County.

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. Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), the Bureau of Development Plans Review (“DPR”) and the Department of Environmental Protection and Sustainability (“DEPS”) they did oppose the requested relief, subject to proposed conditions.

The Petitioners, Lawrence Kelly, Sr., and Victoria Kelly appeared at the hearing. Lawrence E. Schmidt, of Smith, Gildea and Schmidt, LLC represented and assisted the Petitioners.

Stephanie Klaben, a neighbor who lives at 1113 Cold Spring Road also attended the hearing. The subject parcel is 16,200 sq. ft., and zoned RC 5. A site plan was marked and admitted as Petitioners' Exhibit 1. Mr. Schmidt explained that this parcel is Lot 86 of Plat 1 of the Bowley's Quarters subdivision that was recorded in 1921, prior to the enactment of the Baltimore County Zoning Regulations. He further explained that the RC 5 zoning was applied in this area of the county in order to curb development because the area had not yet been connected to public water and sewer. It has since been connected. He noted that this waterfront neighborhood originally consisted of "shore shacks" on narrow lots such as this one. The Kelly's home is one of the smaller, original homes. In recent years most of these small dwellings have been razed and replaced by larger modern dwellings, such as their neighbor, Ms. Klaben's.

Ms. Kelly explained that they wish to add a family room and deck to their existing dwelling. This addition and deck will maintain the side yard setbacks of the existing dwelling and will not alter the roof line. She explained that they have four children and that the family needs this additional living space. Ms. Klaben explained that she lives immediately adjacent to the Kellys. She noted that she had to obtain variances in order to construct her home. Pursuant to one of those variances her home is 10 feet from the side property line, and she does not believe that the Kellys should be permitted to go below that 10 foot setback threshold. She acknowledged that her home sits much higher than the Kellys' home and that the setback variance will not impact her water views. And it should be noted that she stressed that she wants to be a good neighbor and is not trying to prevent the Kellys from building their addition and deck. She suggested that perhaps the addition could be shifted a couple feet toward the other neighboring property line since there is a little more room on that side. Ms. Kelly explained that they have already purchased materials and drawings and that alterations like that would be prohibitively costly.

## NONCONFORMING USE

A valid and lawful nonconforming use is established if the owner can demonstrate that *before and at the time* of the adoption of a new zoning classification/ordinance, the property was being used in a lawful manner that, by later legislation, became non-permitted. *Trip Assoc., Inc. v. Mayor and City Council of Baltimore*, 392 Md. 563, 569 (2006).

In Baltimore County, the law regarding nonconforming uses is set forth in BCZR, §104.1, provides:

A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

The definition of non-conforming use in BCZR, §101.1 is:

NONCONFORMING USE — A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

The two questions to be resolved in this case are: (1) Whether or not the use of the Property existed prior to the inception of a zoning regulation prohibiting that use; and (2) If so, whether that use continued uninterruptedly and was not abandoned or discontinued for a period of one year or more. In the instant case the evidence establishes that both these conditions are met. I further find that the requested relief is within the spirit and intent of the BCZR and will not harm the public health, safety, or welfare. Specifically, now that this property is connected to public water and sewer the continued use of this dwelling on this now undersized parcel will not harm the

environment. Further, this relatively small dwelling will have less impacts than many of the larger, newer dwellings that have recently been built in the area.

#### 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).

As described above, the subject property is unique in that it is a long, narrow waterfront lot that is part of a subdivision plat recorded in 1921, prior to the enactment of the BCZR. If the variance relief were denied the Petitioners would suffer practical difficulty and hardship because they would be unable to build the addition and deck they need for their family. I further find that the variance is within the spirit and intent of the BCZR and that it will not harm the public health, safety or welfare, especially with the conditions imposed below.

THEREFORE, ORDERED this **20th** day of **April, 2022** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to BCZR § 500.7, approve a nonconforming lot and improvements thereon, is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance from BCZR§ 1A04.3(2)(b), to approve a side yard setback of as little as 8.4 ft. in lieu of the required 50 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 shall comply with the ZAC comments of DPR and DEPS, which are attached hereto and incorporated herein.

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

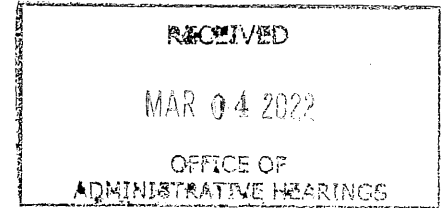


PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/dlm

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Hon. Paul M. Mayhew; Managing Administrative Law Judge  
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and  
Sustainability (EPS) - Development Coordination

DATE: March 4, 2022

SUBJECT: DEPS Comment for Zoning Item # 2022-0027-SPHA  
1115 Cold Spring Road  
(Kelly Property)

Zoning Advisory Committee Meeting of **February 7, 2022.**

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. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

The subject property is located within a Limited Development Area (LDA) and a Modified Buffer Area (MBA) and is subject to Critical Area requirements. The applicant is seeking approval for a side yard setback of as little as 8.8 feet in lieu of the required 50 feet for a proposed addition and deck. The proposed development must meet LDA requirements and the 15% afforestation requirement. The maximum lot coverage limit for this property is 31.25%. If the proposed development can comply with the lot coverage restrictions and the 15% afforestation requirement, the relief requested can result in minimal adverse impacts to water quality.

2. Conserve fish, plant, and wildlife habitat;

This is a waterfront lot with a 100-foot Critical Area buffer extending onto the property from Galloway Creek. Based on the site plan, it appears the proposed addition and deck will be located outside the buffer. Meeting the MBA

requirements, lot coverage requirements, and the 15% afforestation requirement will aid in the conservation of fish, plant, and wildlife habitat in the watershed.

3. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts.

If the proposed development can be designed to meet the MBA, lot coverage, and afforestation requirements, the relief requested will be consistent with established land-use policies.

Reviewer: Gris Batchelder



**BALTIMORE COUNTY, MARYLAND**

**INTEROFFICE CORRESPONDENCE**

**TO:** Peter Gutwald, Director  
Department of Permits, Approvals

**DATE:** March 03, 2022

**FROM:** Vishnu Desai, Supervisor *by VAD*  
Bureau of Development Plans Review

**SUBJECT:** Zoning Advisory Committee Meeting  
For February 07, 2022  
Item No. 2021-0027-SPHA

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments

Prior to building permit application the petitioner, shall contact the office of the Director of Public Works and Transportation to determine the flood Protection Elevation, so that the first Floor Elevation can be set.

\* \* \* \* \*

VKD: cen  
cc: file