



JOHN A. OLSZEWSKI, JR.  
*County Executive*

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

January 18, 2023

Howard Alderman, Esquire - [halderman@aldermanlaw.net](mailto:halderman@aldermanlaw.net)  
Alderman Law LLC  
7505 Mount Vista Road  
Kingsville, MD 21087

RE: Petitions for Special Hearing & Variance  
Case No. 2022-0254-SPHA  
Property: 2121 Abell Lane

Dear Mr. Alderman:

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 cursive script, reading "Paul M. Mayhew".

PAUL M. MAYHEW

Managing Administrative Law Judge  
for Baltimore County

PMM:dlm  
Enclosure

c: Bruce E. Doak – [bdoak@bruceedoakconsulting.com](mailto:bdoak@bruceedoakconsulting.com)  
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IN RE: **PETITION FOR SPECIAL HEARING  
& VARIANCE**

**(2121 Abell Lane)**  
5<sup>th</sup> Election District  
3<sup>rd</sup> Council District  
Beste Pond Farm, LLC  
*Legal Owner*

**Petitioner**

\* BEFORE THE  
\* OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* FOR BALTIMORE COUNTY  
\* **Case No. 2022-0254-SPHA**

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as Petitions for Special Hearing and a Variance filed by the Petitioner, Beste Pond Farm, LLC for the property located at 2121 Abell Lane. A Special Hearing to permit an accessory (in-law) apartment permitted as a temporary use within an existing accessory building situate on the same owner occupied lot as the principal dwelling. A Variance from the Baltimore County Zoning Regulations (“BCZR”):

- 1.) § 400.4.B.2: To permit the size of the accessory (in-law) apartment in an existing building to be 2,670 sq. ft. in lieu of the maximum 1,200 sq. ft.
- 2.) § 400.4.B.4: To permit the existing accessory (in-law) apartment building to have a separate utility meter and sewerage services from the principal dwelling.
- 3.) § 400.3: To permit the existing accessory (in-law) apartment building to have a height of 17.3 ft. in lieu of the required maximum height of 15 ft.
- 4.) Any relief that the Administrative Law Judge (“ALJ”) deems to be necessary.

The Petition was properly advertised and posted. A public WebEx hearing was conducted virtually in lieu of an in-person hearing. Andrew Krause appeared on behalf of Beste Pond Farm, LLC, the Petitioner. He was represented by Howard Alderman, Esquire. Property Line Surveyor

Bruce Doak also attended. The site plan he prepared was admitted as Petitioner's Exhibit 1. Several neighbors also attended. A ZAC comment was received from the Department of Planning ("DOP"). They are opposed to the requested relief because there is already a non-conforming apartment building on the property and they do not believe any additional residences are appropriate for this RC 2 zoned parcel.

Mr. Doak explained that the subject property is approximately 18.278 acres and is zoned RC 2. There is a principal dwelling as well as a separate building with three non-conforming apartments. In addition there is the subject building which was previously used as a commercial woodworking shop. Evidently, the second floor of this building was unlawfully used as a rental apartment over the years. Mr. Doak explained that Mr. Krause's sister Anita was in an automobile accident in 2011 and suffered debilitating injuries, including a traumatic brain injury. As a result she requires assistance with daily living which will be provided by her nephew, Ethan Krause and his fiancé, both of whom are registered nurses. It was further explained that neither the principal dwelling nor any of the on-site apartments are suitable for Anita because they are multi-story designs with hallways too narrow to accommodate her wheelchair. Conversely, the proposed building has an on-grade entrance and has an open floor plan that is all on one level. She would live there with her nephew and his fiancé.

Matthew Albrecht, one of the adjoining property owners on Abell Lane, expressed concerns about the increased traffic and trash being generated by the tenants of the apartments on this property. He is therefore concerned about three more persons living on the property. He acknowledged that until the hearing he was not aware that the proposed living arrangement was for the benefit of Anita Krause, who needs this assistance. Mr. Alderman pointed out that, but for, the layout of the principal dwelling, these three family members could live with Andrew Krause

without obtaining any zoning relief.

### SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005). And, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016).

I share the DOP's concerns about permitting more residential units on this RC 2 zoned property, given the fact that there are already three non-conforming apartments and a principal dwelling. However, these in-law apartments are permitted in the RC 2 zone, and, as counsel noted, these family members could all live together in the principal dwelling but for Anita Krause's medical needs. Further, the proposed in law apartment structure already exists and no exterior modifications are needed. In the final analysis I believe that the proposed in-law apartment for Anita Krause and her two nurses – both family members- is within the spirit and intent of the regulations.

## 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 subject property is unique in several respects. It is irregularly shaped and has varied topography. Part of the property has been placed in a perpetual conservation easement whereby Petitioner forfeited density rights. In addition, the dimensions of the existing building are fixed and the electric sub-meter and well and septic connections are in place, and these features are what drives the need for the requested variances. If the variances were denied Petitioner would suffer practical difficulty and harm because Anita Krause would not be permitted to live in this in-law apartment with the assistance of her nephew and his fiancé. I find that with the conditions imposed below that the variance relief is within the spirit and intent of the zoning regulations and that it will not harm the public health, safety or welfare.

THEREFORE, IT IS ORDERED, this **18th** day of **January 2023**, by the Administrative Law Judge for Baltimore County that the Petition for Special Hearing to permit an accessory (in-law) apartment permitted as a temporary use within an existing accessory building situate on the same owner-occupied lot as the principal dwelling is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Petition for Variance from BCZR § 400.4.B.2: To permit the size of the accessory (in-law) apartment in an existing building to be 2,670 sq. ft. in lieu of the maximum 1,200 sq. ft., from BCZR § 400.4.B.4: To permit the existing accessory (in-law) apartment building to have a separate utility meter and sewerage services from the

principal dwelling and from BCZR § 400.3: To permit the existing accessory (in-law) apartment building to have a height of 17.3 ft. in lieu of the required maximum height of 15 ft. are hereby **GRANTED.**

The relief granted herein shall be subject to the following:

- 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 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, Petitioner would be required to return the subject property to its original condition.
- The proposed accessory apartment shall not be used for commercial purposes.
- Prior to issuance of the Use Permit the Petitioner shall obtain approval of the well and septic systems from the Department of Environmental Protection and Sustainability.
- Prior to the issuance of the Use Permit, Petitioner shall file and record at their expense, an executed and notarized Declaration of Understanding along with a property description, a copy of the proposed detailed and Floor Plan and the Zoning Hearing Site Plan (Pet. Ex. 1) as well as a copy of this Order, in the Land Records of Baltimore County, and shall file a copy of the same with the Department of Permits, Approvals and Inspections.
- If and when Anita Krause is no longer living in this in-law apartment the Use Permit shall be null and void and any further residential use of this structure would require approval via another Special Hearing Petition.

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



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PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

PMM/dlm