

IN THE MATTER OF	*	BEFORE THE
GARY AND KATHLEEN LORADITCH	*	BOARD OF APPEALS
PETITIONERS FOR SPECIAL HEARING AND	*	OF
VARIANCE FOR THE PROPERTY LOCATED	*	BALTIMORE COUNTY
AT 3643 BAY DRIVE	*	CASE No.: 16-203 SPHA
15 <sup>TH</sup> ELECTION DISTRICT		
6 <sup>TH</sup> COUNCILMANIC DISTRICT		

\* \* \* \* \*

**OPINION**

This matter comes before the Board of Appeals for Baltimore County (the “Board”) on cross appeals of the Opinions and Orders of the Administrative Law Judge (hereinafter “ALJ”) wherein the Petitions for Special Hearing and Variance filed herein were granted by Order dated May 17, 2016, and Petitioners’ Motion for Reconsideration was denied by Order dated June 21, 2016. The Petitions were filed by Gary C. Loraditch and Kathleen S. Loraditch, owners of the subject property known as 3643 Bay Drive (hereinafter the “Property”). As originally filed, Special Hearing relief was requested to approve a use permit for an accessory in-law apartment without separate utility meters or water and sewage services pursuant to Baltimore County Zoning Regulations (“BCZR”) § 400.4 and a request for confirmation that a height variance, previously granted for the Property in Case No. 2012-0300-A, is applicable to the principal structure proposed herein. Variance relief was requested from BCZR § 400.3 to permit an accessory building with a height of 30 feet in lieu of the maximum permitted 15 feet and from BCZR § 400.4.B.2 to permit the aforesaid accessory structure to be 1,260 square feet in area in the lieu of the maximum 1,200 square feet. Moreover, as contained within the Petitioners’ Motion for Reconsideration, which was considered and denied by the ALJ, relief was requested to permit an accessory structure in a floodplain greater than 900 square feet in area. A hearing was held on this matter before this Board

on September 7, 2016 with Lawrence E. Schmidt, Esquire of Smith, Gildea & Schmidt, LLC appearing on behalf of the Petitioners, Mr. & Mrs. Loraditch, and with Allen Robertson appearing, pro se, on behalf of the Bowleys Quarters Community Association. A public deliberation was held on October 18, 2016.

**SPECIAL HEARING RELIEF FOR DWELLING HEIGHT**

The Property at issue is an unimproved water front lot, approximately 1.61 acres in area, with frontage on the Chesapeake Bay. Consequently, the Property is located within the State designated Chesapeake Bay Critical Area. As described in the Land Records of Baltimore County, the Property is nearly two acres, but the impact of erosion from the tidal waters has reduced the acreage over the years. Public water and sewer facilities are available to the Property. At the time of the filing of the Petition the Property was zoned RC 5; however, it was the subject of a rezoning request (Issue 6-005) in the recently concluded 2016 Comprehensive Zoning Map Process ("CZMP"). As the result of that process, and upon favorable consideration and vote by the Baltimore County Council on August 30, 2016, the property has been re-zoned to DR 3.5. Although the legislation adopting zoning changes is effective immediately upon the date of the Council's vote, the County's new zoning maps are not published until after the zoning legislation is enacted. Thus, when the Petitions were originally filed and considered by the ALJ, the property was zoned RC 5, but by the time of the Board's hearing, the Property was zoned DR 3.5 (See attached Council Bill 59-16).

In this case, the Property (as now configured) was part of larger lot shown on the Plat of Bowleys Quarters (ALJ Exhibit No. 2) that was recorded in the Land Records at W.P.C. No. 7, Part 1-12 on May 27, 1921. The Property as shown on that plat was part of a larger lot that was 750 feet in width. The depth of the Property as then configured was approximately 300 feet and

**In the matter of: Gary and Kathleen Loraditch**  
**Case number: 16-203-SPHA**

extended from Bay Drive to the waters of the Bay. The Petitioners note that this lot differs from the large majority of lots in Bowleys Quarters (including many shown on the Plat) that are each fifty feet wide.

Mr. and Mrs. Loraditch purchased the property from Timothy W. Starkey on February 4, 2014. The site plan submitted as ALJ Exhibit No. 1 (and elevation drawings submitted as ALJ Exhibit No. 9) depicts a single family detached dwelling to be constructed on the Property. The dwelling will meet all applicable zoning and environmental requirements, except the maximum height limitation. All required setbacks to property lines and road right of ways will be met. The applicable Chesapeake Bay Critical Area standards are also satisfied, including buffer and setback requirements to the water and lot coverage limitations. The only requirement that the proposed dwelling will not meet is the height limitation of 35 feet for a dwelling in the RC 5 zone (See BCZR §1A04.3.A). The proposed dwelling will be approximately 36 feet in height (the cupola on the roof top is not measured in the height calculation per BCZR § 300.1.) Petitioners argue that the dwelling is in compliance with the height regulations for either of two reasons. Although the Petitioners argue that the prior ruling in (Case No. 2012-300-A) provides the necessary relief to allow for the proposed building height, the Board finds it unnecessary to address this issue since under the “new” zoning applied to this Property by the 2016 CZMP (i.e. DR 3.5) the dwellings’ proposed height meets the limits established for that zoning classification. Specifically, the Comprehensive Manual of Development Policies (“CMDP”) limits the height for dwellings in the DR 3.5 zone to fifty feet. The proposed dwelling is within that limitation. The Board is convinced that, for this reason, the Special Hearing request to allow the Loraditch dwelling with a height of 36 feet should be granted.

**VARIANCE RELIEF FOR GARAGE HEIGHT**

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).

Under BCZR § 400.3, the maximum height for an accessory building is fifteen feet and the Petitioners propose a building with a height of 30 feet. The building (shown on the site plan as a 900 square foot structure) will contain storage/car parking on the first floor and a second floor as usable living space. The Petitioners argue that the justification for the dwelling's height is based upon the unique characteristics of the Property and the disproportionate impact of the zoning regulations and Building Code requirements on the lot. As a water front property, the entire site lies within a floodplain. Under the Building Code requirements, living quarters are to be constructed at an elevation above the floodplain (as well as the "freeboard" area established by Code, which provides an additional elevation/dimension as an extra measure of protection). Thus, new dwellings proposed on properties subject to the floodplain regulations are typically built "up" and not "out" so as to ensure compliance with floodplain regulations and protection in the event of severe tidal storms and events. This same rationale is applied to the Petitioners' request for variance relief for the proposed accessory building (garage). The proposed building will contain storage/car parking on the first floor and a second floor as usable living space. Although no residential quarters are proposed (as to be discussed hereinafter) the Petitioners propose that interior workspace, storage or similar uses will be made of the second floor. Based on these arguments, and the fact that the issue of "uniqueness" was previously adjudicated in relationship

to building height on this property, the Board finds that the Petitioners have met the test set forth in *Cromwell* and the requested Variance relief shall be granted.

**FURTHER REQUESTS FOR RELIEF WERE WITHDRAWN**

The Petitioners' additional requests for relief were withdrawn in open hearing. As noted above, the Petitioners originally proposed living quarters (i.e. an in-law apartment) in the garage. It was originally envisioned that Mr. Loraditch's elderly mother might occupy that space. However, pursuant to a Declaration recorded in the Land Records of Baltimore County (BOA Exhibit No. 4) at Book 37938, Page 30, the Petitioners agreed to not have an apartment in the garage. Again, although the second floor will be useable interior space, it will not be an apartment or separate living quarters. Thus, the special hearing to allow the accessory garage apartment without separate utility meters or water/sewer services is withdrawn and no longer under consideration. The Petitioners decision to withdraw this request also moots the variance as it relates to the area of the garage building. Under the accessory apartment regulations (BCZR 400.4.B.2), the garage can be a maximum area of 1,200 square feet. Moreover, under the Building Code (which was considered by the ALJ in Petitioner's Motion for Reconsideration) an accessory building in a flood plain can be a maximum of 900 square feet in area. The Petitioners have abandoned these two requests because: 1. the garage will no longer be used as an apartment; and 2. the size of the proposed garage (as shown on the site plan) has been reduced to a maximum of 900 square feet. Thus, these separate requests under the Petition for Special Hearing and Petition for Variance are withdrawn.

The Petitioners have noted that they contemplate the filing of a minor subdivision plan for the Property. In view of the new zoning classification assigned to the Property (DR 3.5), the Petitioners will propose the subdivision of the Property into three lots. The proposed house and

In the matter of: Gary and Kathleen Loraditch  
Case number: 16-203-SPHA

garage described in the instant case will be on the “middle” lot and two new lots (on each side) are contemplated. The zoning relief granted herein is not impacted by that plan and the Petitioners will need to comply with the applicable subdivision/development/zoning requirements for the residential improvement of those two “new” lots.

### **CONCLUSION**

For the foregoing reasons and based upon the record of evidence offered in this case, the Board finds that the Petitioners’ proposed dwelling height is permitted under current zoning laws and that the Petitioners’ Request for Variance Relief regarding the proposed garage height is **GRANTED**.

### **ORDER**

**THEREFORE, IT IS THIS** 19<sup>th</sup> day of January, 2017, by the Board of Appeals of Baltimore County,

**ORDERED**, that the Special Hearing request to allow the Loraditch dwelling with a height of 36 feet be and the same is hereby **GRANTED**; and it is further

**ORDERED**, that the requested Variance to allow an accessory building (garage) with a height of 30 feet in lieu of the maximum height of fifteen feet be and the same is hereby **GRANTED**; and it is further

**ORDERED**, that the additional requests for Special Hearing and Variance relief to permit living quarters (i.e. an in-law apartment) in the garage without separate utility meters or water/sewer service, and to permit the accessory structure to be 1,260 square feet in area in lieu of the maximum 1,200 square feet have been **WITHDRAWN** by the Petitioners and are hereby **DISMISSED AS MOOT**.

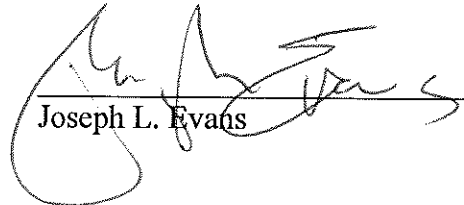
In the matter of: Gary and Kathleen Loraditch  
Case number: 16-203-SPHA

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
\_\_\_\_\_  
Andrew M. Belt, Chairman

  
\_\_\_\_\_  
Meryl W. Rosen

  
\_\_\_\_\_  
Joseph L. Evans



## Board of Appeals of Baltimore County

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January 19, 2017

Lawrence E. Schmidt, Esquire  
Smith, Gildea & Schmidt, LLC  
600 Washington Avenue, Suite 200  
Towson, Maryland 21204

Allen Robertson  
1608 Holly Tree Road  
Middle River, Maryland 21220

RE: *In the Matter of: Gary and Kathleen Loraditch*  
Case No.: 16-203-SPHA

Dear Messrs. Schmidt and Robertson:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review** filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Han".

Krysundra "Sunny" Cannington  
**Administrator**

KLC/tam  
Enclosure  
Duplicate Original Cover Letter

c: Gary and Kathleen Loraditch  
Ronald Walper/Bowleys Quarters Community Association  
Lawrence M. Stahl, Managing Administrative Law Judge  
Andrea Van Arsdale, Director/Department of Planning  
W. Carl Richards, Jr., Zoning Review Supervisor/PAI  
Arnold Jablon, Deputy Administrative Officer, and Director/PAI  
Nancy C. West, Assistant County Attorney/Office of Law  
Michael E. Field, County Attorney/Office of Law

Paul and Kathleen Paul  
Kenneth J. Wells/KJWells, Inc.  
Office of People's Counsel