

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
N/S River Drive Road, 270' W of c/line of		
Grace Road	*	ZONING COMMISSIONER
(7006 River Drive Road)		
15 th Election District	*	OF
7 th Council District		
	*	BALTIMORE COUNTY
Eugene L. Perkins, III, et ux		
Petitioners	*	Case No. 2009-0081-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Administrative Variance filed by the owners of the subject property, Eugene L. Perkins, III, and his wife, Leslie K. Perkins. The Petitioners request a Variance from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit setbacks from a side yard (east side) of 2 feet and rear yard of 20 feet in lieu of the required 10 feet and 30 feet respectively for a proposed breezeway addition from a principal building to an existing detached garage. The subject property and requested relief are more particularly described on the site plan, floor plan and elevation drawings submitted, which were accepted into evidence and marked as Petitioners' Exhibits 1, 12 and 13.¹

This case was originally filed as an Administrative Variance, pursuant to Section 32-3-303 of the Baltimore County Code. That Section allows an individual to seek variance relief for an owner-occupied residential property without a formal hearing, provided certain conditions are met. First, the property is duly posted and advertised giving public notice of the requested relief. Under the Code, any property owner residing within 1,000 feet of the property in question

¹ In response to the adjacent neighbors concerns, and after ongoing discussions, these exhibits were amended to reduce the mass of the enclosed breezeway space by providing for a covered breezeway passageway between the house and garage as opposed to an enclosed breezeway addition. Amended elevation drawings were received as Petitioners' Exhibits 17 and 19.

can request a public hearing within fifteen (15) days of the sign posting, if that person objects to the relief requested. If no hearing is requested, the matter can be considered and an Order issued by the Zoning Commissioner/Deputy Zoning Commissioner, based on the documentation contained in the file.

In this case, the property was duly posted and within the requisite time period Joseph F. Evering, III, residing at 7008 River Drive Road, filed a request for a formal demand on October 2, 2008. Thus, this matter was scheduled for a public hearing, which was held on December 9, 2008.

Appearing at the hearing in support of the request were Eugene and Leslie Perkins, property owners, their attorney, William F. C. Marlow, Jr., Esquire, and John T. Westerlund, Jr., of Bellefield Design, Inc., a consultant in architectural design and construction. Appearing as Protestants/interested parties were the adjacent neighbors Joseph and Loris Evering. There were no other interested persons present and it is noted that there were no adverse Zoning Advisory Committee (ZAC) comments submitted by any of the County reviewing agencies.

Testimony and evidence offered revealed that the subject property is a waterfront lot approximately 50 feet wide and 150 feet deep, located with frontage on Back River² and adjacent to the north side of River Drive Road in eastern Baltimore County. The property contains a gross area of 0.17 acres (7,700 square feet), more or less, zoned D.R.5.5 and improved with a two-story “Florida-style” single-family dwelling (*See* Petitioners’ photograph Exhibit 2), a detached two-car garage and pier extending out into the water. The lot is identified as Lot 16 of Lynch Point, which is an older subdivision that was platted and recorded in the Land Records in

² The Zoning Commissioner’s Policy Manual (ZCPM) at Sections 400.1.a and 400.2.a provides a determination of what constitutes the front yard on waterfront lots based on the orientation of the houses and accessory buildings. In most cases, as is the situation here, waterfront lots refer to the front of the structure facing the water.

1926, prior to the first set of zoning regulations in Baltimore County. As is often the case with older subdivisions, many of the lots are undersized and do not meet current width requirements. In this regard, the D.R.5.5 regulations require a 55-foot lot width. The property is also located in the Chesapeake Bay Critical Area and Tidal Floodplain and any re-development must comply with Sections 33-2-101 through 33-2-1004 of the Baltimore County Code (B.C.C.).

Mr. Perkins acquired the property in 2006 and testified as to the appearance and condition of the structure's exterior which he describes as not being compatible with the Lynch Point subdivision and surrounding community. Both the house and garage were built twenty (20) years ago and are in need of extensive remodeling. The flat roof(s) are leaking, flashing used around parapet walls allow water to enter between the foam substrate and plywood framing causing structural damage. Both structures are covered with "dryvit", a specific brand of an exterior insulation and finish system (EIFS), and is essentially a stucco finish requiring painting. To improve the exterior appearance at the time of purchase, the Petitioners painted structural exteriors but due to its brittle condition and prior damage sustained in Hurricane Isabel, the dryvit is again stained and peeling off. Mr. Perkins testified that the home has only a master bedroom and no guest rooms. His adult son resides in the home downstairs and he and his wife anticipate that Mr. Perkins' 82-year old father will move into the home as well as Mrs. Perkins 78-year old Aunt, Ruth Stonik, who requires constant care. He testified that he consulted with architects and finally retained Mr. Westerlund to redesign and rebuild the structure(s) using existing footprints. In essence, he wants to convert the "Florida-style" home to a more compatible "Victorian" shingled style that is common to the area. The alterations will provide additional living space by modifying the existing garage converting the 16 foot high flat roof to a gambrel roof with a 24' high roof ridge cap and as noted above build a covered breezeway from

the guestroom over the garage (*See* Petitioners' elevation drawings – Exhibit 19 and floor plans – Exhibit 13). The lower level of the garage to the front door entrance into the house will continue to function as a conventional two-car garage.

Mr. Westerlund t/a Bellefield Design, Inc., accepted as an expert in residential architectural design and construction management, was next to testify and corroborated much of what Eugene Perkins had stated. He explained the uniqueness of the property by stating that the structures are already built and located on the lot, that the current design limits the use of the home and that the dryvit (EIFS) is a flawed product. The home, with its one-family bedroom is not compatible with the area and his redesign and improvements would provide for a beautiful home, add additional bedrooms and adhere to the requirements in the County floodplain management ordinance. Since the detached accessory garage is to be attached to the existing house by a covered breezeway, it will be considered as one structure driving the need for variance relief. Due to the lot's configuration, however, the patio style walkway will be the only footprint change and will not be visually noticeable either from the street side or water side of the subject property, thus in keeping with the spirit and intent of the B.C.Z.R. He stated that strict compliance with the regulations would result in practical difficulty for the Petitioners. Compliance with Federal flood insurance conditions requires that floors be at flood protection elevation 10.4 feet. The breezeway incorporating a new entrance has been designed to allow for a more graduated "step-up" to reach the required floodplain elevation than do current movements. This will be a welcomed change and provide easier access to older occupants. In sum, Mr. Westerlund opined that his redesign and improvements would not have a detrimental impact to the health, safety or general welfare of the surrounding locale. He presented photographs – Exhibits 4, 10 and 15 – depicting similar improvements in the immediate area,

some done prior to Hurricane Isabel, some post-Hurricane Isabel.

Joseph Evering cross-examined the witnesses presented by William Marlow and was able to demonstrate that the subject lot itself is not unique when compared with other waterfront lots in Lynch Point. Moreover, he opined that there was more than just one bedroom in the Petitioners home (*See* Protestants Exhibit 7 - Realtors Listing - advertising 3 bedrooms in January 2008) and that the desired replacement roof(s) and exterior renovations were possible without the need for variance relief. He questioned Mr. Westerlund about the construction of the enclosed breezeway, as initially proposed, having a visually detrimental affect on the adjacent lot owners who would look at the right and left side elevations and see a house 103 feet long situated on a 155 foot deep lot.

Testimony was then received from Mr. and Mrs. Evering. They have lived in their home since 1983. Interestingly, the Everings applied for a variance requesting a 3-foot side yard setback to add a one-story addition to their home built in 1924. Evidently, the Office of Planning required him to revise his plans to provide a 7-foot setback in lieu of the required 10 feet. Mr. Evering produced photographs (*See* Petitioners' Exhibits 1 and 2) that he took demonstrating the projected roof ridge heights of the breezeway and raised garage from his perspective. He emphasized that he and his wife, and their grandchildren, use and enjoy their swimming pool located in the rear yard located adjacent to the proposed breezeway. With a 24 and 19 foot height at the roof ridgeline(s) of these structures so close to the property line, he feels it would over shadow his property and block the benefit of sunlight after midday when the sun begins to descend in the western sky. He asked for a public hearing to the side yard variance request. He stated, if granted and the breezeway connection and guestroom above the garage are built, it will be visually overpowering, interfere with adequate light and air, and lower the property value of

his home. As a matter of fairness, he thought the proposed improvements were attractive but more situated for a much larger lot. Without a doubt, he stated these improvements on such a small lot would change the look and character of the neighborhood – for the worst. He felt that the variance, if granted, would benefit one owner to the detriment of his family and neighbors. In support of this opinion, a letter requesting the variance be denied was received from Daniel G. Spivey and marked as Protestants Exhibit 8.

As stated at the conclusion of the hearing, this is a difficult case. From a practical standpoint, I am appreciative of the Perkins' desire to expand and improve their home. The only impervious footprint change is the raised walkway and covered breezeway. On the other hand, the Everings have lived in a home for 25 years and fear the McMansion size of the subject proposal.

Turning to the appropriateness of the variance to permit a side yard setback of 2 feet in lieu of the required 10 feet and a rear yard setback of 20 feet in lieu of the required 30 feet, I shall grant the relief as being appropriate and consistent with the neighborhood. In the D.R.5.5 zone, the regulations require a minimum 10-foot side yard and 30-foot rear yard setbacks if the accessory structure (garage) is attached to the existing dwelling. Due to the unusual architectural and structural characteristics possessed by this property, not shared by other properties in the area, the requested variance relief is in order to comply with the spirit and intent of those regulations.

I find that the Petitioners have met the requirements of Section 307 and *Cromwell v. Ward*, 102 Md. App. 691 (1995) for relief to be granted. It is clear that strict compliance with the regulations would result in practical difficulty for the Petitioners and prevent further improvement of the property for a permitted purpose. There were no adverse comments

submitted by any County reviewing agency. Only meager evidence was presented to support the contention that a detriment would befall Messrs. Evering and Spivey's rights to light and air. Thus, I find that the relief can be granted without detrimental impact to the health, safety, or general welfare of the surrounding locale. The remodeled structures will occupy the same footprints as they do today. Due to the property's waterfront location and its location within a floodplain, the proposed construction shall comply with the Chesapeake Bay Critical Areas regulations and Federal flood insurance requirements as set forth in the attached ZAC comments submitted by the Department of Environmental Protection and Resource Management (DEPRM) and the Bureau of Development Plans Review.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 18th day of December, that the Petition for Variance, seeking relief from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed breezeway to an existing detached garage and create an addition with a side yard setback of 2 feet and a rear yard setback of 20 feet in lieu of the required 10 feet and 30 feet, respectively, in accordance with Petitioners' Exhibits 1, 13 and 19, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permits and 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 the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) Compliance with Chesapeake Bay Critical Areas regulations and Federal Flood Insurance requirements pursuant to the ZAC comments submitted by DEPRM, dated October 17, 2008, and the Bureau of

- 3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County