

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
W side of Bay Drive; 113 feet NE of the		
c/l of Bay Drive	*	ZONING COMMISSIONER
(3518 Bay Drive)		
15 th Election District	*	OF
6 th Council District		
	*	BALTIMORE COUNTY
Michael C. Hawk		
<i>Petitioner</i>	*	Case No. 2010-0226-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 owner of the subject property, Michael C. Hawk for property located at 3518 Bay Drive. The Petitioner requests a variance from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling with side setbacks of 4 feet and 16 feet in lieu of the required 50 feet and to confirm previous zoning Case No. 2009-0210-A. The subject property and requested relief are more particularly described on the site plan which was accepted into evidence and marked as Petitioner’s Exhibit 1. Petitioner’s existing dwelling has substantial structural defects. The only change in the subject variance case is to move the proposed dwelling 6 feet further away from the residential neighbor at 3516 Bay Drive to give both parties more space and privacy. Petitioner’s other neighbor is the Bowleys Quarters Condomarina, Inc.

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 Environmental Protection and Resource Management dated April 15, 2010 which indicates that development of the property must comply with the Chesapeake Bay Critical Area Regulations. This property is in a Limited Development Area (LDA) and Buffer Management Area (BMA) of the Chesapeake Bay Critical Area. All lot coverage limits, buffer management requirements, and afforestation requirements

must comply with DEPRM's 12/10/09 letter to the property owner. Comments were received from the Bureau of Development Plans Review dated March 10, 2010 which indicate that the first floor or basement must be at least one foot above the flood plain elevation in all construction, the building should be designed and adequately anchored to prevent flotation or collapse and constructed of materials resistant to flood damage. Flood-resistant construction should be in accordance with the Baltimore County Building Code which adopts the International Building Code.

The property was the subject of previous Variance request in Case No. 2009-0210-A. In that case, Petitioner requested the following relief:

- To allow 10 foot side yard setbacks in lieu of the required 50 foot side yard setbacks in an R.C.5 Zone pursuant to Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) and;
- To allow 17% building coverage in lieu of the required 15% building coverage in an R.C.5 Zone pursuant to Section 1A04.3.B.3 of the B.C.Z.R. and;
- To allow an undersized lot of 0.307 acre in lieu of the required 1.5 acres of land in an R.C.5 Zone pursuant to Section 1A04.3.B.1.a of the B.C.Z.R. and;
- To allow a 38 foot building height in lieu of the required 35 foot building height in an R.C.5 Zone pursuant to Section 1A04.3.A of the B.C.Z.R.

Case No. 2009-0210-A was granted with conditions on May 7, 2009 by the Undersigned. Petitioner now comes before this Deputy Zoning Commissioner seeking additional relief from the required setbacks.

The Petitioner having filed a Petition for Administrative Variance and the subject property having been posted on March 7, 2010 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioner has filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code. Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of

the public and should therefore be granted. In the opinion of the Deputy Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of Section 307.1 of the B.C.Z.R. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

Based upon the evidence contained therein, I am persuaded to grant the requested variance. I find the property unique in a zoning sense in that the setback and height constraints cause the subject property to be disproportionately impacted by the Zoning Regulations as compared with other surrounding properties, making it virtually impossible for Petitioner to have any dwelling erected on the property. The property is only 50 feet wide and the setback for each side is 50 feet.

Finally, I find that the variance requests 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. In the subject case, Petitioner proposes only to move the proposed dwelling six feet further away from the only neighbor thereby providing more space and privacy for both properties.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 19th day of April 2010, that the Petition for Administrative Variance seeking relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling with side setbacks of 4 feet and 16 feet in lieu of the required 50 feet and to confirm previous zoning Case No. 2009-0210-A be and is hereby **GRANTED**, subject to the following restriction:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at his 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. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).
3. All lot coverage limits, buffer management requirements, and afforestation requirements must comply with the Department of Environmental Protection and Resource Management's (DEPRM) letter of 12/10/09 to the property owner.
4. The base flood elevation for this site is 10.2 feet Baltimore County Datum. The flood protection elevation for this site is 11.2 feet. In conformance with Federal Flood Insurance Requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.
5. The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.
6. The building engineer shall require a permit for this project. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
7. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz