

IN RE: PETITION FOR ADMIN. VARIANCE

SW side of Riverside Drive; 163 feet NW
of the c/l of Essexwood Court * BEFORE THE

15th Election District * DEPUTY ZONING

7th Councilmanic District * COMMISSIONER

(620 Riverside Drive) * FOR BALTIMORE COUNTY

Keith M. and Debra S. Hart * **Case No. 2011-0091-A**

Petitioners

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject waterfront property, Keith M. and Debra S. Hart for property located at 620 Riverside Drive. The variance request is from Section 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an existing detached accessory structure (pool with deck) to be located in the front of the dwelling and with a side yard setback of 2 feet in lieu of the required rear and 2.5 feet. The subject property and requested relief are more particularly described on Petitioners’ Exhibit No. 1. Petitioners state that the pool and deck were placed on the waterfront (front) side of the house for aesthetic reasons and public safety issues. The street side (back) of the house contains the garage and driveway and that area is too small and too close to the street to accommodate the above ground pool and deck. Petitioners installed the oval above ground swimming pool on the portion of the yard that is level. The detached deck which accesses the pool and makes this portion of the yard level for outdoor enjoyment. The detached deck and above ground swimming pool are well kept and attractive features on the property. Photographs submitted with the Petition illustrate that neighbors enjoy decks in their front yards. The adjacent neighbors at 622 Riverside Drive have a large attached deck. These photographs also show the downward slope of the Petitioners’ yard.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Bureau of Development Plans Review dated September 28, 2010. The comments 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. Comments were received from the Department of Environmental Protection and Resource Management (DEPRM) dated October 25, 2010. DEPRM 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, DEPRM offers the following comments:

1. The proposal is to permit an existing pool with a pervious deck to be located on the waterfront side of the dwelling with a side-yard setback of 2 feet in lieu of the required 2.5 feet. The lot coverage on the property exceeds the maximum allowed in the Critical Area Law, and the area of accessory structures allowed within the Critical Area buffer has been exceeded. Lot coverage on the property, and accessory structure area within the buffer must be reduced to meet all Critical Area requirements. In addition, Critical Area mitigation requirements must be met. Based on this, DEPRM has determined that adverse impacts on water quality from the pollutants discharged from these structures can be minimized with compliance and mitigation pursuant to Critical Area requirements.
2. The subject development can meet the requirement to conserve fish, wildlife, and plant habitat by bringing the site into compliance with the Critical Area Law and through mitigation.
3. Accessory structures such as this pool and the associated deck are permitted under the State-mandated Critical Area regulations provided that development is in compliance with all Critical Area requirements. The Critical Area Law limits the lot coverage on the property and within the tidal buffer. Compliance with the law, and mitigation can allow the subject development to be consistent with established land use policy 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.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on September 12, 2010 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have 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 Petitioners.

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 Deputy Zoning Commissioner for Baltimore County, this 26th day of October, 2010 that a variance from Section 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an existing detached accessory structure (pool with deck) to be located in the front of the dwelling and with a side yard setback of 2 feet in lieu of the required rear and 2.5 feet is hereby GRANTED, subject to the following:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The base flood elevation for this site is 7.7 feet [NAVD 88].
3. The flood protection elevation for this site is 8.7 feet.

4. 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.
7. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
8. 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