

IN RE: PETITION FOR ADMIN. VARIANCE

N side Penwood Avenue; 715 feet W
of the cl of North Point Road
15th Election District
7th Councilmanic District
(8016 Penwood Avenue)

Alvin K. and Deborah I. Medlin
Petitioners

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2011-0095-A**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Office of Administrative Hearings for Baltimore County as a Petition for Administrative Variance filed by the legal owners of the subject property, Alvin K. and Deborah I. Medlin for property located at 8016 Penwood Avenue. The variance request is from Sections 1B02.3.C.1 (Section 1B02.3.C.2.C of the Zoning Commissioner’s Policy Manual) and 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed addition to an existing detached accessory building (garage) to have a street setback of 18 feet and a height of 24 feet in lieu of the required 25 feet and 15 feet respectively. The subject property and requested relief are more particularly described on Petitioners’ Exhibit No. 1. Petitioners desire to enlarge the existing 20 feet x 24 feet garage to 28 feet x 28 feet with a second floor storage area above with a height of 24 feet. There is nowhere else to construct the structure due to the narrow lot and existing improvements thereon.

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 October 5, 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 December 3, 2010. DEPRM has reviewed the subject zoning petition for compliance with the goals of the State-mandated Critical Area Law listed in the B.C.Z.R., Section 500.14. Based upon this review, they offer the following comments:

1. The current proposal includes an increase in lot coverage over the 4,425 square feet grandfathered limit, which does not comply with the Limited Development Area (LDA) regulations. The proposed tire tracks are not permitted for compliance with the LDA regulations. The applicant must propose the removal of an adequate area of lot coverage from elsewhere on the lot to comply with the LDA regulations and to minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run-off from surrounding lands.
2. The applicant's current proposal does not comply with the LDA regulations therefore will not conserve fish, wildlife and plant habitat.
3. The current proposal is not consistent with established land use policies for development in the Chesapeake Bay Critical Area since the proposed lot coverage will exceed the grandfathered lot coverage limit.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on September 9, 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 Administrative Law Judge, 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.

Although the Office of Planning did not make any recommendations related to the garage height and usage, I will impose conditions that the accessory structure not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or bathroom facilities, and not be used for commercial purposes.

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. The requested variance has been granted; however, granting of the variance does not preclude the Department of Environmental Protection and Resource Management (DEPRM) from denying the permit.

THEREFORE, IT IS ORDERED, by the Administrative Law Judge for Baltimore County, this 21st day of January, 2011 that a variance from Sections 1B02.3.C.1 (Section 1B02.3.C.2.C of the Zoning Commissioner's Policy Manual) and 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a proposed addition to an existing detached accessory building (garage) to have a street setback of 18 feet and a height of 24 feet in lieu of the required 25 feet and 15 feet respectively 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 Petitioners or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The accessory structure shall not be used for commercial purposes.
4. The base flood elevation for this site is 7.7 feet [NAVD 88].
5. The flood protection elevation for this site is 8.7 feet.

6. 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.
7. 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.
8. The building engineer shall require a permit for this project.
9. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
10. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.
11. Prior to the issuance of any building permit, Petitioners shall comply with the ZAC comment submitted by the Department of Environmental Protection and Resource Management (DEPRM) dated December 3, 2010. A copy of this comment has been attached hereto and is made a part hereof.
12. When applying for a building permit, the site plan filed must reference this case and set forth and address the conditions and restrictions of this Order.

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

SIGNED
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

Attachment

TMK:pz