

IN RE: PETITION FOR ADMIN. VARIANCE
E side of Cherwin Avenue; 410 feet NE
of the c/l of Birdwood Avenue
15th Election District
6th Councilmanic District
(13215 Cherwin Avenue)

Angela L. Huth
Petitioner

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2011-0154-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 owner of the subject property, Angela L. Huth for property located at 13215 Cherwin Avenue. The variance request is from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a garage to be located in the front yard with a height of 16.8 feet in lieu of the required rear yard and a permitted height of 15 feet. The subject property and requested relief are more particularly described on Petitioner’s Exhibit No. 1. Petitioner desires to construct a garage measuring 24 feet x 35 feet and states the front yard placement is due to the unique physical characteristics of the neighborhood. The neighboring back yards face the subject property at the front yard. Placing the garage in the back yard would interfere with the community integrity as the neighboring front yards face the subject property at the back 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 November 10, 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 Office of Planning dated November 16, 2010. That office is concerned about the proposal and requests a full variance hearing to ensure that all aspects of this particular case can be examined and are disclosed to the adjacent property owners. The Planning Office suggests that the garage be constructed at the end of the driveway in the rear yard of the property. Placing the garage at this location would complement the already established pattern of the house orientation. Structures on Powderdale Avenue to the south of the property already face the rear of the existing dwelling and would not face any additional negative impact from the rear of the garage, provided that it is finished with quality materials and maintains a residential character. The Office of Planning also recommends 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. Comments were received from the Department of Environmental Protection and Resource Management (DEPRM) dated December 21, 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, they offer the following comments:

1. This lot is located within a Limited Development Area (LDA) of the Chesapeake Bay Critical Area (CBCA). It is not waterfront. Relief to the height restrictions and to allow the garage in the front yard will not adversely affect the Critical Area. A limit of 31.25% on lot coverage, and mitigation for lot coverage between 25% and 31.25% will minimize adverse impacts on water quality that result from development activities.
2. The proposed development must comply with all LDA requirements. There must be six trees on the property to meet the 15% afforestation requirement; the trees must be planted if none exist on site; therefore the subject zoning petition will conserve fish, wildlife, and plant habitat.
3. The proposed development will be required to meet all LDA requirements and therefore will be consistent with established land use policies 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 Petitioner having filed a Petition for Administrative Variance and the subject property having been posted on November 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 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.

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 Administrative Law Judge for Baltimore County, this 19th day of January, 2011 that a variance from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a garage to be located in the front yard with a height of 16.8 feet in lieu of the required rear yard and a permitted height of 15 feet is hereby GRANTED, subject to the following:

1. The Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her 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 Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The Petitioner 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 8.5 feet [NAVD 88].
5. The flood protection elevation for this site is 9.5 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. 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.
12. 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 21, 2010. A copy of this comment has been attached hereto and is made a part hereof.
13. 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

