

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
N side of Blackhead Road, 359 feet		
W of c/l of Crooks Road	*	DEPUTY ZONING
15 <sup>th</sup> Election District		
6 <sup>th</sup> Councilmanic District	*	COMMISSIONER
(6534 Blackhead Road)		
	*	FOR BALTIMORE COUNTY
<b>Philip A. and Patricia A. DiPietro</b>		
<i>Petitioners</i>	*	<b>CASE NO. 2011-0159-A</b>

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Philip A. and Patricia A. DiPietro. Petitioners are requesting Variance relief from Sections 1A01.3.B.3 and 301.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an existing open projection (porch) to have a side yard setback of 6 feet in lieu of the required 26¼ feet. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Petitioners Philip A. and Patricia A. DiPietro. Appearing as interested citizens were next door neighbors James Sullivan of 6536 Blackhead Road and Edna Dotterweich of 6530 Blackhead Road.

Testimony and evidence offered revealed that the subject property is rectangular shaped and consists of approximately 13,300 square feet zoned R.C.2. The property is located on the north side of Blackhead Road as part of the Bird River Beach subdivision situated in the Chase area of eastern Baltimore County. As shown on the site plan, the property is currently improved with an existing two-story single-family dwelling that was built in 2007. According to tax records, Petitioners have owned the property since 1984 and it was once improved with a one-

story single-family cottage. Over the years, that home came into a state of disrepair and Petitioners filed for an Administrative Variance in order to obtain setback variance relief for the construction of a new home. That variance was granted in Case No. 06-354-A. More recently, Petitioners began construction of a deck, though without having first obtained a building permit and the necessary variance relief from the side yard setback requirements (similar to the setback requirements for their home). At this juncture, having already begun construction of the deck, Petitioners now desire to complete the existing deck that was started as shown in the photographs that were marked and accepted into evidence as Petitioners' Exhibits 4A through 4D.

In support of the variance relief, Petitioners indicated that the portion of the deck that extends into the side yard has the same depth as an existing deck that extends from the main second floor entrance to the home. They merely wish to construct the deck with the same depth as well as on the water side of the home. Petitioners also provided additional photographs of nearby properties with deck or garage or similar structural improvements in the side yard setback areas, which were marked and accepted into evidence as Petitioners' Exhibits 5A through 5G.

Testifying as an interested citizen was Mr. Sullivan. He indicated that he rebuilt the "shoreshack" that was on his property in 1978. He is not necessarily opposed to Petitioner's deck and the necessary variance relief, but he is concerned that Petitioners might place a permanent enclosure or four-season porch where the water side of the deck is located, followed by another deck off that. He does not want to see his views of the water obstructed by potential additional structures. Ms. Dotterweich also testified. Her property is adjacent to the side yard where the deck extends into the setback area. She is concerned about permitting Petitioners' deck to extend into the setback area, especially with the size and height of the overall home and the second floor deck area. Ms. Dotterweich understands Petitioners' desire to tie in the deck on the water side

with the existing deck area off the main second floor entrance to the home, but she is also generally opposed to Petitioners' variance request.

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 December 22, 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, we offer the following comments:

1. This lot is located within a Limited Development Area (LDA) and Buffer Management Area (BMA) of the Chesapeake Bay Critical Area (CBCA). The proposed porch is entirely within the 100-foot buffer. Relief to the side yard setback will help minimize waterward encroachment but will not eliminate the need to fully address all BMA requirements. A lot coverage limit of 5,277 square feet and mitigation for new lot coverage will minimize adverse impacts on water quality that resulting from development activities.
2. The proposed development must comply with all LDA and BMA requirements, including the 15% afforestation requirement. No trees will be removed and mitigation will be required for BMA and lot coverage impacts; therefore the subject zoning petition will conserve fish, wildlife, and plant habitat.
3. The proposed development will be required to meet all LDA and BMA 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.
4. The proposed porch (bldg. permit) will be reviewed by Groundwater Mgmt., for setbacks; such as to make sure the structure will not block access to the existing septic system there.

Comments were also received from the Bureau of Development Plans Review dated November 29, 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.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. In my judgment, the second floor water side deck and the decking that extends into the side yard at the same depth as the existing deck off the main second floor entrance to the home fits in aesthetically. I also find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. As was the case with the original administrative variance from five years ago, the side yard setback requirements for the R.C.2 Zone are onerous. It would require a 35 foot setback for a dwelling and three quarters of that length -- or 26¼ feet -- for an open projection. This property is comprised of two lots that are each 25 feet wide for a total of 50 feet. The required 35 foot side yard setbacks would be virtually impossible to meet in any event. With the present location of the home that was predicated on the prior variance relief, the 26¼ foot setback requirement for the deck is equally onerous. Hence, I believe variance relief is appropriate in this instance.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED this 7<sup>th</sup> day of January, 2011 by this Deputy Zoning Commissioner that Petitioners' Variance request from Sections 1A01.3.B.3 and 301.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit an existing open projection (porch) to have a side yard setback of 6 feet in lieu of the required 26¼ feet be is hereby **GRANTED**, subject to the following:

1. Petitioners may apply for permits 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, 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 8.5 feet [NAVD 88]. The flood protection elevation for this site is 9.5 feet.
3. 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.
4. 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.
5. 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.
6. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.
7. The proposed development must comply with all Limited Development Area and Buffer Management Area requirements including the 15% afforestation requirement. No trees will be removed and mitigation will be required for BMA and lot coverage impacts.
8. Petitioners shall not construct any permanent roof or other enclosure where the water side deck is located. It shall remain in all respects an open projection.

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

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz