

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
W side of Holly Tree Road, 24 feet N		
of Burke Road	*	OFFICE OF
15 th Election District		
6 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
(1606 Holly Tree Road)		
	*	FOR BALTIMORE COUNTY
Terry and Nichol Martin		
<i>Petitioners</i>	*	Case No. 2011-0281-A

* * * * *

OPINION AND ORDER

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, Terry and Nichol Martin property located at 1606 Holly Tree Road. The variance request is as follows:

- From Section 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed accessory structure (pool) and accessory structure (pool house) in the side yard in lieu of the required rear yard; and
- From Section 400.3 of the B.C.Z.R. to permit a height of 20 feet in lieu of the maximum required 15 feet.

The subject property and requested relief are more particularly described on Petitioners’ Exhibit No. 1. The property contains an existing one story 1,263 square feet dwelling that is being converted to an accessory structure (pool house). The pool measuring 15 feet x 35 feet will be located next to this existing structure.

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 March 31, 2011. 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 Sustainability dated April 7, 2011. DEPS 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. These waterfront lots are located in a Limited Development Area (LDA) and a Buffer Management Area (BMA) within the Chesapeake Bay Critical Area and must comply with all requirements of Baltimore County Code Article 33, Title 2 Chesapeake Bay Critical Areas Protection. Based on the Code, the lot coverage area on each lot is limited to 25%, or a maximum of 31.25% if approved and with mitigation for the amount over 25%. It appears that the lot coverage on each lot may exceed the maximum allowed. If the lot coverage does exceed the maximum allowed, removal of lot coverage would be required. In addition, a 15% forest cover must exist on each lot at all times. Mitigation requirements can increase the number of trees required on the site. A 100-foot tidal buffer measured off mean high water covers almost half the area of each lot. BMA requirements restrict the location and area of structures allowed within this buffer. The location and size of the pool/pool deck may require adjustment to meet BMA requirements. Based on this, DEPS has determined that adverse impacts on water quality from the pollutants discharged from the proposed development can be minimized with compliance and mitigation pursuant to Critical Area requirements. Mitigation requirements may include removal of lot coverage and the planting of native trees and shrubs.
2. The subject development can meet the requirement to conserve fish, wildlife, and plant habitat by complying with all Critical Area requirements including mitigation.
3. The proposed development is permitted under the State-mandated Critical Area regulations provided that development is in compliance with all Critical Area requirements. Lot coverage on both lots is limited. Compliance with the Critical Area requirements, including 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 April 3, 2011, 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 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 Administrative Law Judge for Baltimore County, this 29 day of April, 2011 that Petitioners' Variance request as follows:

- From Section 400.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a proposed accessory structure (pool) and accessory structure (pool house) in the side yard in lieu of the required rear yard; and
- From Section 400.3 of the B.C.Z.R. to permit a height of 20 feet in lieu of the maximum required 15 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 8.5 feet [NAVD 88].
3. The flood protection elevation for this site is 9.5 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.
9. Compliance with the conditions imposed by the Department of Environmental Protection and Sustainability in their comments dated April 7, 2011, and enumerated earlier in the subject Order.
10. When applying for any permits, the site plan filed must reference this case and set forth and address the 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

TMK:pz