

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W/Side of Beck Avenue, 1,350' N of c/line		
of Turkey Point Road	*	OFFICE OF ADMINISTRATIVE
15 th Election District		
6 th Councilmanic District	*	HEARINGS FOR
(506 Beck Avenue)		
	*	BALTIMORE COUNTY
Thomas J. and Jennifer Mullen		
<i>Petitioners</i>	*	CASE NO. 2011-0285-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Thomas J. and Jennifer Mullen, the legal owners of the subject property. Petitioners request Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To permit a proposed dwelling with a side yard setback of 12¾ feet and a combination of side yard setbacks of 22¾ feet in lieu of the required 15 and 25 feet respectively, and
- To permit a lot width of 61¾ feet in lieu of the required 70 feet.

The subject property and requested relief is more fully depicted 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 Thomas J. and Jennifer Mullen, property owners. Also attending was their architect, Robert Moll. There were no Protestants or other interested parties in attendance.

Testimony and evidence offered revealed that the property is located at 506 Beck Avenue in the Essex area of the County. The subject property is a waterfront lot and is zoned DR 3.5. At this time the property is improved with an existing single family dwelling which has been uninhabitable for several years. The owners of the property reside in another waterfront

community in Essex. However, they are desirous of razing the old shore shack on this waterfront lot and constructing a new home in its place. Architectural renderings of the new home to be constructed on the property were submitted into evidence by Mr. Robert Moll, the architect who has designed the subject dwelling. In order to proceed with the construction of this new home on this property, the variance relief is necessary.

Photographs submitted into evidence show that the property owners have made tremendous improvements to the site by way of a clean up of the shoreline of the property, the installation of riprap along the shoreline and the construction of a new floating pier on the property. The property owners have also discussed the construction of their new home with their neighbors, many of whom submitted letters of support for the variance relief requested herein.

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 Sustainability (DEPS) dated May 2, 2011 which indicates that the DEPS has reviewed the subject zoning petition for compliance with goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, their comments are offered as follows:

1. This lot is located within a Limited Development Area (LDA) and Buffer Management Area (BMA) of the Chesapeake Bay Critical Area (CBCA). Based on the plan that accompanies this zoning petition, it appears that the proposed dwelling will be located outside of the 100-foot buffer. Lot coverage is limited to 25% of the property area, without mitigation, and with approval, up to 31 ¼% of the property area, with mitigation. Allowing a zoning variance for reduced side-yard setbacks and/or reduced lot width is not contrary to CBCA lot coverage limits and the BMA requirements, and will therefore minimize adverse impacts on water quality that result from development activities.
2. The proposed development must comply with all LDA and BMA requirements, including the 15% afforestation requirement and CBCA lot coverage requirements, prior to building permit approval. 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.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested 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.

Additionally, I find that strict enforcement of the B.C.Z.R. would cause the Petitioners to suffer practical difficulty and undue hardship.

I further find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety, and general welfare. Thus, I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R, as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

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

THEREFORE, IT IS ORDERED this 12 day of May, 2011 by this Administrative Law Judge that Petitioners' Variance request from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows:

- To permit a proposed dwelling with a side yard setback of 12 $\frac{3}{4}$ feet and a combination of side yard setbacks of 22 $\frac{3}{4}$ feet in lieu of the required 15 and 25 feet respectively, and
- To permit a lot width of 61 $\frac{3}{4}$ feet in lieu of the required 70 feet

be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. This lot is located within a Limited Development Area (LDA) and Buffer Management Area (BMA) of the Chesapeake Bay Critical Area (CBCA). Based on the plan that accompanies this zoning petition, it appears that the proposed dwelling will be located outside of the 100-foot buffer. Lot coverage is limited to 25% of the property area, without mitigation, and with approval, up to 31 ¼% of the property area, with mitigation. Allowing a zoning variance for reduced side-yard setbacks and/or reduced lot width is not contrary to CBCA lot coverage limits and the BMA requirements, and will therefore minimize adverse impacts on water quality that result from development activities.
3. The proposed development must comply with all LDA and BMA requirements, including the 15% afforestation requirement and CBCA lot coverage requirements, prior to building permit approval. Therefore, the subject zoning petition will conserve, fish, wildlife and plant habitat.
4. 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.

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

