

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of 2 nd Street; 110' W of		
Cuckold Point Road	*	OFFICE OF
15 th Election District		
7 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
(2803 2nd Street)		
	*	FOR BALTIMORE COUNTY
David M. and Michele L. McWilliams		
<i>Petitioners</i>	*	Case No. 2011-0344-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings as a Petition for Variance filed by the legal owners of the subject property, David M. and Michele L. McWilliams. The variance request is from Sections 1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed replacement dwelling with a side yard setback of 8 feet in lieu of the minimum required 10 feet and a front street setback of 35 feet in lieu of the averaged front street setback of 40 feet. The subject property and requested relief are more particularly described on Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was David McWilliams, property owner. The record in this case reflects that the subject property was properly posted and advertised as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested citizens in attendance.

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 June 9, 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. A permit from the Building Engineer will be required for the project, and flood-resistant construction should be in accordance with the Baltimore County Building Code which adopts the International Building Code. The subject property, being in the Chesapeake Bay Critical Area, the Department of Environmental Protection and Sustainability (DEPS), pursuant to § 500.14 of the B.C.Z.R. provided written recommendations to the file. They noted that, to minimize the impact on water quality, lot coverage requirements must be met by the Petitioners in carrying out the project. That action will, in DEPS' opinion, be a positive factor in conserving fish habitat in Back River. Upon compliance with their comments, DEPS believes that the project is consistent with the goals of the Chesapeake Bay Critical Area Regulations.

Testimony and evidence offered by the Petitioners revealed that the property is 50 feet x 138 feet and is zoned DR 5.5. It is served by public water and sewer. Petitioners wish to replace the existing structure with a single family residence 50 feet x 32 feet. Further, he wishes to reduce the front street setback to 35 feet in lieu of the required 40 feet in order to affect a reduction in lot coverage in conformance with the above-noted DEPS comments. Addressing himself to the requirements of the statutes and case law regarding variances, Petitioners believe that the property is unique in that, at 138 feet, the lot is shorter than many in the area; it is also higher in elevation than many of the surrounding properties. He wishes to provide living space for his family, including facilities for his mother-in-law, who suffers from severe medical issues. Without the requested variance, he will not be able to provide for the needs of his extended family and still be in a position to conform with the requirements set out in the various agency comments.

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. Moreover, I find that strict

enforcement of the B.C.Z.R. would cause the Petitioners to suffer practical difficulty and undue hardship. Therefore, I also find that the variances requested can be granted in strict harmony with the spirit and intent of the said regulations, and in such a manner as grant relief without injury to the public health, safety, and general welfare.

Thus, the variances requested 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 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 13 day of July, 2011 that a Variance from Sections 1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed replacement dwelling with a side yard setback of 8 feet in lieu of the minimum required 10 feet and a front street setback of 35 feet in lieu of the averaged front street setback of 40 feet, be and 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 7.7 feet [NAVD 88].
3. The flood protection elevation for this site is 8.7 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.

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

Signed
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:pz