

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
NW Corner at Cuckold Point Road and	*	OFFICE OF
6 <sup>th</sup> Street		
15 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
7 <sup>th</sup> Councilmanic District		
<b>(9015 Cuckold Point Road)</b>	*	FOR BALTIMORE COUNTY
Robert P. Poleski	*	<b>Case No. 2011-0346-SPHA</b>
Petitioner		

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Variance filed by Robert P. Poleski, the legal property owner. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a waiver to build an addition consisting of approximately 355 square feet to an existing garage consisting of approximately 854 square feet in a tidal floodplain for a combined total of 1,208 square feet, and to retain an existing kitchen and bathroom. Petitioner is also requesting Variance relief from Sections 400.1 and 400.3 of the B.C.Z.R. to permit an addition to an existing garage to be located in the third part of the yard closest to the street with a height of 19 feet, 4 inches in lieu of the required third part of the yard farthest removed from the street and a maximum height of 15 feet. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requested relief was Petitioner Robert Poleski. There were no Protestants or other interested persons 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, which 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 also received from the Department of Environmental Protection and Sustainability (DEPS), dated July 29, 2011, which indicate as follows:

The subject property is located within the Chesapeake Bay Critical Area. According to BCZR Section 500.14, no decision shall be rendered on any petition for special exception, zoning variance, or zoning special hearing for a property within the Critical Area until the Department of Environmental Protection and Sustainability (EPS) has provided written recommendations describing how the proposed request would:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands; *The subject property is located within a Limited Development Area and is subject to Critical Area lot coverage requirements. To minimize impacts on water quality, lot coverage cannot exceed the existing amount. According to the applicant's plan, lot coverage is proposed to be increased with a carport addition to the existing garage. The plan does not indicate improvements for access to this carport (for example: driveway) and this needs to be addressed along with any potential improvements to the existing garage access. Lot coverage added by addition of the carport and any driveway improvements must be mitigated by removal of an equal amount of lot coverage on this property. By meeting the lot coverage requirements, allowing the relief requested by the applicant will result in minimal impacts to water quality. It is recommended that the zoning item be conditioned to require specific information on access to the carport and garage, and to limit lot coverage {as defined in Natural Resources Article §8-1802(a)(17)} on the property to no greater than the existing amount.*
2. Conserve fish, wildlife, and plant habitat; and *The current development of the property limits water quality and habitat functions, but can maximize water quality management by adhering to lot coverage limits and tree requirements established in the Critical Area law. It is recommended that the zoning petition be conditioned to require conformance with Critical Area requirements to offset water quality impacts associated with the carport addition and any lot coverage proposed on-site.*
3. 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 applicant's proposal to construct additions to the existing garage can be consistent with this goal provided that lot coverage on the property does not increase. The relief requested will be consistent with established land-use policies provided that the applicants meet the conditions listed in comments 1 and 2 above.*

Testimony and evidence revealed that the subject property is improved with a single family dwelling (1,080 square feet) and detached garage, situated on a corner lot at Cuckold Point Road and 6<sup>th</sup> Street. Petitioner testified he bought the home in 1987, and that the property is in the same condition and configuration as when it was purchased. Photos (Exhibit 2) show several large and attractive homes constructed in the area, and Petitioner does not want his garage to “stick out like a sore thumb.”

After due consideration of the testimony and evidence presented, I am persuaded to grant the variance relief requested.

As to the variance request, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, as is customary in the area, Petitioner's lot is very narrow (50 feet) and the house and garage were constructed many years ago. As such, the unique layout of the site imposes constraints, and even a modest improvement to the garage requires zoning relief.

I further find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship. Finally, I find the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare, as amply demonstrated by the lack of community opposition and the letters of support from five (5) adjoining neighbors. See Exhibit 4.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner's variance requests should be granted.

I am unable to grant the relief sought in the Petition for Special Hearing, concerning a waiver of certain floodplain requirements pursuant to Baltimore County Code § 32-4-107. Although the County Code directs the hearing officer to entertain such waiver requests, a condition precedent is that a “department director” must request such relief. Based on my review of the file and Petitioner’s submissions, it does not appear as if a department director has made such a request, and I am therefore unable to grant the Petition.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County this \_\_\_9th\_\_\_ day of August, 2011 that Petitioner’s Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a waiver to build an addition consisting of approximately 355 square feet to an existing garage consisting of approximately 854 square feet in a tidal floodplain for a combined total of 1,208 square feet, and to retain an existing kitchen and bathroom, be and is hereby DENIED, and

IT IS FURTHER ORDERED that Petitioner’s Variance request from Sections 400.1 and 400.3 of the B.C.Z.R. to permit an addition to an existing garage to be located in the third part of the yard closest to the street with a height of 19 feet, 4 inches in lieu of the required third part of the yard farthest removed from the street and a maximum height of 15 feet, be and is hereby GRANTED.

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that he may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. The addition and existing garage shall not be used for a dwelling unit or apartment. The structure shall not contain any sleeping quarters or living area.

3. Petitioners must comply with the Zoning Advisory Committee (ZAC) comments received from the Bureau of Development Plans Review, dated July 9, 2011, and the Department of Environmental Protection and Sustainability, dated June 29, 2011; copies of which are attached hereto and made a part hereof.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

Attachments

JEB:pz