

IN RE: PETITION FOR ADMIN. VARIANCE
SW side of Riverview Road, 490 feet NW
of the c/l of Back River Neck Road
11th Election District
6th Councilmanic District
(2130 Riverview Road)

Laurie Ann and James J. Barbour, Jr.
Petitioners

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2011-0350-A**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings as a Petition for Administrative Variance filed by the legal owners of the subject property, Laurie Ann and James J. Barbour, Jr. for property located at 2130 Riverview Road. The variance request is from Sections 1A04.3.B.2.b and 301.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed open projection (deck) with side yard setbacks as close as 2 feet in lieu of the minimum required 37.5 feet. The subject property and requested relief are more particularly described on Petitioners’ Exhibit No. 1. Petitioners desire to construct a deck on the waterfront side of the home. Wayne Goodman of 2128 Riverside Road, provided a letter indicating that he has no objection to the placement of the deck.

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 dated June 30, 2011. The subject property is located within the Chesapeake Bay Critical Area. According to B.C.Z.R. 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 (DEPS) 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. The applicant is proposing to construct a gapped board, pervious deck on the waterfront side of the home. Because of the pervious deck construction and no increase in lot coverage as defined in State of Maryland Natural Resources Article §8-1802(a)(17), water quality impacts have been minimized in this proposal. By meeting the lot coverage requirements, the relief requested by the applicant will result in minimal impacts to water quality.

2. Conserve fish, wildlife, and plant habitat; and

This waterfront property is located within a Buffer Management Area (BMA) of the Critical Area. The applicant's plan accompanying this zoning petition shows that the proposed deck is located within the 100-foot tidal buffer. While the proposed deck is to be pervious, there are impacts to the tidal buffer. The new impacts require mitigation that will improve buffer functions and conserve fish habitat in Back River.

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 a pervious deck on the waterfront side of the home is consistent with this goal. The relief requested will be consistent with established land-use policies provided that the applicants meet the requirements stated above.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on June 19, 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 15 day of July, 2011 that a variance from Sections 1A04.3.B.2.b and 301.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed open projection (deck) with side yard setbacks as close as 2 feet in lieu of the minimum required 37.5 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 subject property is located in a Limited Development Area and Buffer Management Area of the Chesapeake Bay Critical Area and is subject to lot coverage requirements.

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



TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz