

IN RE: PETITION FOR VARIANCE
W side of Denton Road; 180' S of the
c/line of Cherry Garden Road
15th Election District
6th Councilmanic District
(1512 Denton Road)

Frank B. and Catherine R. Brown
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2011-0360-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by the legal owners of the subject property, Frank B. and Catherine R. Brown. Petitioners are requesting Variance relief under Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit side yards with a minimum of 6 feet and a sum of 14 feet in lieu of the required 10 feet and 25 feet respectively for a replacement dwelling on the existing lot of record. 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 Petitioner Frank Brown, William H. Storm, IV with Freestate General Contractors, and David Billingsley of Central Drafting & Design, who are assisting the Petitioners with the permitting process. The file reveals that the Petition was properly advertised and the property was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance at the hearing.

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 on July 8, 2011 and based on this review, they offer the following comments:

“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 (LDA) and is subject to Critical Area lot coverage requirements. The applicant is proposing to construct a replacement dwelling that is larger than the existing dwelling. The increase in lot coverage {as defined in State of Maryland Natural Resources Article §8-1802(a)(17), must meet all LDA requirements and water quality impacts can be minimized in this proposal. By meeting the lot coverage and BMA 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 dwelling is located entirely within the 100-foot tidal buffer. Impacts to the tidal buffer must meet all BMA requirements for location but the proposed side yard setbacks would not affect those requirements. The new impacts require mitigation that will improve buffer functions and conserve fish habitat in Muddy Gut.

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 replacement dwelling on this waterfront property 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.”

Comments were received from the Bureau of Development Plans Review dated July 6, 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 shall be in accordance with the Baltimore County Building Code which adopts the International Building Code.

Mr. Billingsley offered a proffer on behalf of the Petitioners. He stated that they had purchased the property, zoned DR 3.5, in 2011 with the intention of razing the existing one story structure built in 1938 and constructing a new building as noted as the Plat to Accompany the Petition for Variance (Petitioners' Exhibit 1).

The witness addressed himself to the various agency comments. As the property is located within the Chesapeake Bay Critical Area, the Department of Environmental Protection and Sustainability (DEPS), requirements were set out pursuant to the B.C.Z.R. Section 500.14. Development Plans Review also provided detailed comments regarding structural requirements for the proposed construction. Petitioners agree and will carry out the proposed construction in full compliance with the various comments. In addition, he has agreed and will provide for any mitigation costs related to all areas disturbed by the project.

In regards to the variance request itself, the witness offered that the subject property is unique in light of its irregular water-side dimensions as well as the narrowing of the property from 50 feet frontage to 44 feet at the rear. Given the dimensions of the site, construction without the requested variance would require the structure to be only 21 feet wide, rendering it untenable both physically and financially.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested 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 to grant relief without injury to the public, health, safety and general welfare. In all manner and respect, the variances requested meet

the requirements of Section 307 of the B.C.Z.R. as well as those requirements established in *Cromwell v. Ward*, 102 Md. App. 691 (1995) and *McLean v. Soley*, 270 Md. 208 (1973).

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

THEREFORE, IT IS ORDERED this 5th day of August, 2011 by this Administrative Law Judge that Petitioners' Variance requests from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit side yards with a minimum of 6 feet and a sum of 14 feet in lieu of the required 10 feet and 25 feet respectively for a replacement dwelling on the existing lot of record, be and is 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. Petitioners are to comply with the Zoning Advisory Committee (ZAC) comments received from the Department of Environmental Protection and Sustainability dated July 8, 2011 and the Bureau of Development Plans Review, dated July 6, 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.

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

Attachment

LMS:pz