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| IN RE: PETITION FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| N/S of Bay Drive, 212 feet E from | * | OFFICE OF ADMINISTRATIVE |
| from the c/l of Wye Road | | |
| 15 th Election District | * | HEARINGS FOR |
| 6 th Council District | | |
| (3814 Bay Drive) | * | BALTIMORE COUNTY |
| | | |
| Nechay Family Realty, LLC | | |
| <i>Petitioner</i> | * | CASE NO. 2012-0013-SPHA |

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ORDER AND OPINION

This matter comes before the Administrative Law Judge as Petition for Special Hearing filed by the legal owner of the property, Nechay Family Realty, LLC. The Petitioner is requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit the construction of an accessory structure on a lot with the principal structure on a lot separate from the one the accessory structure is located. Variance relief is also being requested from Section 1A04.3.B.2 of the B.C.Z.R. to: (1) to permit a front yard to be 65 feet from the centerline of the street in lieu of the required 75 feet, and (2) to permit a side yard setback to be 10 feet in lieu of the required 50 feet, and from Section 400.3 of the B.C.Z.R. to permit a height of 19 feet in lieu of the maximum permitted 15 feet for an accessory structure. 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 held for this case was Rudolph Nechay, Petitioner, and Rick Richardson with Richardson Engineering, LLC, the consultant who prepared the site plan for the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons present.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. Comments were received from the Office of Planning (OP), received August 17, 2011, as follows:

The Office of Planning has reviewed the petitioner's request and accompanying site plan. The Office of Planning does not oppose an accessory structure on the subject lot without a principle structure and the associated variances provided the proposed garage is designed with residential character. The proposed structure shall be articulated with windows, doors, materials and a roof pitch with residential character. Submit architectural elevations of the proposed garage to the Office of Planning for review and approval prior to the issuance of any building permits.

Comments were also received from the Department of Environmental Protection and Sustainability (DEPS), dated August 4, 2011, which indicate:

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. The applicant is proposing to reduce the side and front yard setbacks for a garage as well as to allow an accessory structure on a lot without a principal structure. To minimize impacts on water quality, lot coverage requirements must be met. Reduction of setbacks will help reduce lot coverage. It appears there may be wetlands adjacent to the rear of the property; if this is the case, appropriate buffers will be necessary. By meeting the lot coverage requirements and all buffer requirements, the relief requested by the applicant will result in minimal impacts to water quality.

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

This property is not waterfront. The applicant's plan accompanying this zoning petition shows that the requested relief will meet the lot coverage limits on site, which will conserve fish habitat in Back River. Additionally, protection of any applicable wetlands and associated buffers will conserve fish, wildlife, and plant habitat.

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 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.

In addition, comments were also received from the Bureau of Development Plans Review (DPR), dated July 27, 2011, which state:

1. The base flood elevation for this site is 8.5 feet [NAVD 88].
2. The flood protection elevation for this site is 9.5 feet.
3. 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.
4. 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.
5. The building engineer shall require a permit for this project.
6. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
7. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code

There were no other comments received from any of the County reviewing agencies.

Rick Richardson of Richardson Engineering testified on behalf of the Petitioner. He is a civil engineer involved in land use, development and zoning issues since 1980. He was accepted as an expert in civil engineering and in land use and development in Baltimore County as it relates to the Baltimore County Zoning Regulations (B.C.Z.R.). The witness described the subject property as consisting of 0.72 acres, zoned RC 5, in the Middle River area of Baltimore County. Petitioner wishes to construct a garage on the subject property, situated across Bay Drive from his residence, for the sole purpose of storing his collection of antique cars. A macadam driveway from the garage will connect it to Bay Drive. The building itself will be 19 feet high in order to allow for the placing and removal of antique cars stored there. As seen from Bay Drive, the new structure will have four bay doors and a standard door. Its outer walls will be constructed so as to appear to be a residential structure (as set out in Petitioner's Exhibits 3A and B). The subject

garage will be connected to public water and sewer, and will include a shower, sink, and toilet, but will not have any kitchen facilities.

The witness related that the residence of Petitioner located across Bay Drive from the subject site, is waterfront property. The proposed garage is itself located within the floodplain and is a limited development area within the Chesapeake Bay Critical Area. Petitioner wishes to minimize impervious lot coverage near the water and limit to the greatest extent possible any more impervious surface than is absolutely needed to carry out the proposed construction.

Addressing the request for variances, the witness pointed to the location of the proposed site within the floodplain area, subject to the Chesapeake Bay Critical Area Regulations as well as its location within the County wetlands as factors rendering it unique. Further, he opined that in order to construct the proposed garage in compliance with these regulations, while minimizing as much as possible the creation of additional impervious surfaces, the requested variances are essential and if not granted, would as a practical matter, prevent the Petitioner from constructing the requested garage.

As to the special hearing request itself, Mr. Richardson urged that Petitioner's site for the garage, located across Bay Drive from the waterfront home of the Petitioner, would minimize any adverse effects on the environment while allowing the Petitioner to utilize the property for a permitted appropriate purpose. He then addressed the requirements set out in Section 502.1 of the B.C.Z.R. as they relate to Petitioner's special hearing request. He testified that clearly the construction of a garage on the subject site would not be detrimental to the health, safety or general welfare of the locality involved; would not tend to create congestion in roads, streets or alleys; nor would it create a potential hazard from fire or panic or other danger; or tend to overcrowd land or cause undue concentration of population. It would not interfere with adequate provisions for schools or parks, and would be connected to public water and sewer. It would not

interfere with adequate light and air, and would not inconsistent with the impermeable surface and vegetative retention provisions of the zoning regulations. As such, the witness opined that the Petitioner's would not be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations. Finally, as the subject site is located within the RC 5 zone, he stated that the proposed constructed would not be detrimental to the environmental and natural resources of the site and, in fact, Petitioner's plan would minimize any adverse effects thereto.

Based on the testimony and evidence presented, I find that there is more than sufficient information to determine that the proposed construction of a garage as presented by the Petitioner would be appropriate. Moreover, I find that special circumstances and conditions exist that are unique to the subject property; and that, due to these unique conditions, strict enforcement of the B.C.Z.R. would cause the Petitioner to suffer a practical difficulty. Finally, I find that the relief requested will not result in any adverse impact on the surrounding area; rather, the proposed improvement will be a positive addition to the subject property and the surrounding locale.

Finally, I find that 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 advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner's request for special hearing and variances should be granted.

THEREFORE, IT IS ORDERED, this 2nd day of November, 2011 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief from Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit the construction of an accessory structure on a lot with the principal structure on a lot separate from the one the accessory structure is located, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance from Section 1A04.3.B.2 of the B.C.Z.R. to: (1) to permit a front yard to be 65 feet from the centerline of the street in lieu of the required 75 feet, and (2) to permit a side yard setback to be 10 feet in lieu of the required 50 feet, and from Section 400.3 of the B.C.Z.R. to permit a height of 19 feet in lieu of the maximum permitted 15 feet for an accessory structure.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for their building permit and may be granted same upon receipt of this Order, however the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.
2. The Petitioner shall comply with the ZAC comments received from the Office of Planning dated August 12, 2011, the Department of Environmental Protection and Sustainability dated August 4, 2011, and the Development Plans Review dated July 27, 2011; copies of which are attached hereto and made a part hereof.
3. Petitioner shall not allow construction of a kitchen or food related facilities in the proposed garage; nor shall said garage be used for any residential purpose whatsoever.

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