

IN RE: PETITION FOR ADMIN. VARIANCE

S side of private Road; 219 feet S of the
c/l of Cape May Road
15th Election District
6th Councilmanic District
(1845 Cape May Road)

Margaret A. Hood
Petitioner

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2012-0028-A**

* * * * *

OPINION AND ORDER

This matter comes before this Office of Administrative Hearings for Baltimore County as a Petition for Administrative Variance filed by the legal owner of the subject property, Margaret A. Hood for property located at 1845 Cape May Road. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an addition on the side of an existing dwelling with a rear setback of 12 feet in lieu of the required 30 feet. The subject property and requested relief are more particularly described on Petitioner’s Exhibit No. 1. Petitioner desires to construct an addition measuring 17' x 23.67'. The proposed addition will be ‘flush’ with the front of the existing dwelling. Due to the layout of the dwelling, the addition can only be constructed as shown on the site plan. Additional living space is needed for the family. The property is irregular in shape and fronts on Hog Pen Creek.

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 August 15, 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 dated August 31, 2011. 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. Based on the plan, the proposed home addition can meet the lot coverage requirements, and impacts to water quality can be minimized.

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 addition is to be located no further waterward than the existing dwelling. By meeting BMA, lot coverage, and planting requirements, buffer functions can be maintained and conserve fish habitat in Hog Pen Creek.

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 can be consistent with this goal and with established land-use policies provided that the applicants meet the requirements stated above.

The Petitioner having filed a Petition for Administrative Variance and the subject property having been posted on May 22, 2011, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioner has 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 Petitioner.

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 2nd day of September, 2011 that a variance from Comments were received from the Bureau of Development Plans Review dated August 15, 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 is hereby GRANTED, subject to the following:

1. The Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her 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 Petitioner 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.
9. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability dated August 31, 2011, a copy of which is 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