

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
SE/side of Blackhead Road, 130' SW	*	OFFICE OF ADMINISTRATIVE
of the c/line of Mallard Road	*	
15 th Election District	*	HEARINGS FOR
6 th Council District	*	
(6619-6621 Blackhead Road)	*	BALTIMORE COUNTY
Catherine M. Letke	*	
Petitioner	*	CASE NO. 2012-0033-A

* * * * *

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 owner of the property, Catherine M. Letke. The Petitioner is requesting Variance relief from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a 51-foot front setback from the centerline of a street, in lieu of the 75-foot minimum required. The subject property and requested relief is more fully depicted 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 variance request was Petitioner Catherine M. Letke and James D. Grammer with McKee and Associates, Inc., the consulting firm who prepared the site plan. The file reveals that the Petition was properly advertised and the site was properly posted as required by the B.C.Z.R. There were no Protestants or other interested persons in attendance, and the Petitioner indicated her neighbors were strongly supportive of her request.

Testimony and evidence offered revealed that the subject property is zoned R.C.2 and contains 0.64 acres, more or less. The subject property is part of the Bird River Beach subdivision, the plat for which was submitted as Petitioner’s Exhibit 2. The property was subdivided in 1923, and two (2) dwellings have existed on the Petitioner’s lot since 1940-50. The Petitioner now desires to raze both of these dwellings (as shown on Exhibit 1) and construct in

their place one single family dwelling. To do so, Petitioner requires variance relief so that the proposed dwelling can be situated 51 feet from the centerline of Blackhead Road.

The Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability, dated September 7, 2011, which provide as follows:

DEPS has reviewed the subject zoning petition for compliance with the goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, we offer the following comments:

1. This lot is located within a Limited Development Area (LDA) of the Chesapeake Bay Critical Area (CBCA). The lot is not waterfront. Lot coverage is limited to a maximum of 5,445 square feet with mitigation. Allowing a variance to the front yard setback is not contrary to CBCA lot coverage limit, and will therefore minimize adverse impacts on water quality that result from development activities.
2. The proposed development must comply with all LDA requirements, including the 15% afforestation requirement and CBCA lot coverage requirements, prior to building permit approval. Therefore the subject zoning petition will conserve fish, wildlife, and plant habitat.

The proposed development will be required to meet all LDA requirements and therefore will 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.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, DEPS has insisted that Petitioner relocate the existing septic system and provide a reserve area as well. As depicted on Exhibit 1, in order to locate the septic trenches as required, the Petitioner needed to situate the proposed dwelling 51 feet from the centerline of the road, and the application of these more stringent environmental requirements renders this property unique.

I further find that the granting of the relief as set forth herein can be accomplished without injury to the public health, safety, and general welfare. In fact, there will be one dwelling instead of two, and the revised septic system will provide environmental benefits to the community. Therefore, in all manner and form, I find that variance relief can be granted in accordance with the requirements of Section 307 of the B.C.Z.R. as articulated in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

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

THEREFORE, IT IS ORDERED, this 14th day of September, 2011 by this Administrative Law Judge that Petitioner's Variance request from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a 51-foot front setback from the centerline of a street, in lieu of the 75-foot minimum required, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order, however the Petitioner is hereby made aware that proceeding at this time is at her 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 Petitioner will be required to return and be responsible for returning said property to its original condition.
2. The Petitioner shall comply with the comments of the DEPS, dated September 7, 2011; a copy of which is attached and made a part hereof.

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

JEB:dlw

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County