

IN RE: PETITION FOR ADMIN. VARIANCE
N side of New Section Road, 574 feet E of
the c/l of South Seneca Road
15th Election District
6th Councilmanic District
(3922 New Section Road)

Robert R. and Cathy Anne Rosensteel
Petitioners

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2012-0034-A**

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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, Robert R. and Cathy Anne Rosensteel for property located at 3922 New Section Road. The variance request is from Section 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory structure (detached garage) with a height of 24 feet in lieu of the maximum permitted 15 feet. The subject property and requested relief are more particularly described on Petitioners’ Exhibit No. 1. Petitioners wish to construct a garage measuring 24 feet x 30 feet in size to be located on the street side of their waterfront property. The additional garage height is necessary to store personal belongings. Photographs submitted with the Petition indicate there are a number of properties with similar garages.

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 September 7, 2011, which indicates 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) and Buffer Management Area (BMA) of the Chesapeake Bay Critical Area (CBCA). The proposed garage will be located outside of the 100-foot buffer. Lot coverage is limited to a maximum of 4,266 square feet with mitigation. Allowing a variance to the height limit is not contrary to CBCA lot coverage limit and the BMA requirements, and will therefore minimize adverse impacts on water quality that result from development activities.
2. The proposed development must comply with all LDA and BMA 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.
3. The proposed development will be required to meet all LDA and BMA 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”.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on August 14, 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.

Although the Office of Planning did not make any recommendations related to the garage height and usage, I will impose conditions that the accessory structure not be converted into a

dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or bathroom facilities, and not be used for commercial purposes.

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 8th day of September, 2011 that a variance from Section 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit an accessory structure (detached garage) with a height of 24 feet in lieu of the maximum permitted 15 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 Petitioners or subsequent owners shall not convert the subject accessory structure into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The accessory structure shall not be used for commercial purposes.
4. The Petitioners shall comply with the Zoning Advisory Committee (ZAC) comment, dated September 7, 2011, from the Department of Environmental Protection and Sustainability; 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.

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz