

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NW/side of New Section Road; 500'		
S of c/line of South Seneca Road	*	OFFICE OF ADMINISTRATIVE
(3920 New Section Road)		
15 th Election District	*	HEARINGS FOR
6 th Council District		
	*	BALTIMORE COUNTY
Robert Barrett and Sophia Dritsas		
Petitioners	*	CASE NO. 2012-0042-A

* * * * *

ORDER AND OPINION

This matter comes before the Administrative Law Judge as a Petition for Variance filed by the legal owners of the property, Robert Barrett and Sophia Dritsas. The Petitioners are requesting Variance relief pursuant to Section 301.1.A of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an as-built gazebo attached to an open front deck with a 5.2 feet side setback in lieu of the required 37.5 feet side setback. 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.

This matter arose from a complaint registered with the Code Enforcement Division of the Department of Permits, Approvals and Inspections¹. A Code Inspections and Enforcement Correction Notice was issued to the Petitioners on May 4, 2011, for failure to obtain a building permit for a deck and gazebo on the waterside of dwelling and failure to obtain the required inspections. Hence, Petitioners filed the instant Petition to legitimize same.

Appearing at the requisite public hearing held for this case were the Petitioners, Robert Barrett and Sophia Dritsas, and Robert Infussi with Expedite, LLC, who is assisting the Petitioners with the permitting process. The file reveals that the Petition was properly advertised

¹ Case No: CO-0092792

and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance at the hearing, and the Petitioners indicated their neighbors were supportive of their request.

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 (DPR), dated August 26, 2011, as follows:

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.

Comments were also received from the Department of Environmental Protection and Sustainability (DEPS), dated September 13, 2011, 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 waterfront property is located in a Limited Development Area and a Buffer Management Area within the Chesapeake Bay Critical Area. Development of this property must comply with a maximum lot coverage limit of 31.25% (4,697 square feet) with mitigation for the lot coverage amount over 25% (3757.5 square feet), must meet BMA requirements for development within the 100-foot tidal

buffer, and must meet a 15% tree cover requirement. Any portion of the deck that does not have a roof and is constructed with spaces between the boards so as to be pervious does not count towards the lot coverage limits. Based on this, DEPS has determined that adverse impacts on water quality from the pollutants discharged from the proposed development can be minimized with compliance and mitigation pursuant to Critical Area requirements. Mitigation requirements may include the planting of native trees and shrubs.

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 is permitted under the State-mandated Critical Area regulations provided that development is in compliance with all Critical Area requirements. Lot coverage on the property is limited. Compliance with the Critical Area requirements, and mitigation can allow the subject development to be consistent with established land use policy 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.

Testimony and evidence offered revealed that the subject property is zoned R.C.5 and contains 0.345 acres, more or less. The property is served by public water and sewer, and is within the Chesapeake Bay Critical Area (CBCA). Petitioners purchased their home in August 2003, and less than a month later it was totally destroyed by Hurricane Isabel. The Petitioners reconstructed their present home on the same “footprint” in May 2005, and rebuilt the same deck on the front of their home that existed before the storm. Petitioners purchased a pre-built gazebo (shown on Exhibit 3) which was positioned on their lot. Petitioners indicated they were unaware of the setback requirements, and thought they were permitted to reconstruct the improvements on the lot in basically the same location before Hurricane Isabel.

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. As noted above, Petitioners' home was totally destroyed by Hurricane Isabel, and they advised the insurance company paid them only about \$20,000 for the loss. They lived in a neighbor's pool house for over two years while saving to construct their new home, and did so with the understanding they were allowed to reconstruct the improvements in the same location, which failed to account for the side yard setback requirements of the B.C.Z.R. These facts, coupled with the very narrow lot and the somewhat unorthodox orientation of the dwelling on that lot, render the 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. Therefore, in all manner and form, I find that the variance requested can be granted in such a manner as to 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 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 15th day of September, 2011 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Section 301.1.A of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an as-built gazebo attached to an open front deck with a 5.2 feet side setback in lieu of the required 37.5 feet side setback, 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 shall comply with the ZAC comments received from the Bureau of Development Plans Review (DPR), dated August 26, 2011, and Department of Environmental Protection and Sustainability (DEPS), dated September 13, 2011; copies of which are attached hereto and made a part hereof.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:dlw