

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
NE/side of Grace Road; 235' SW of		
c/line of River Drive Road	*	OFFICE OF ADMINISTRATIVE
(3316 Grace Road)		
15 th Election District	*	HEARINGS FOR
7 th Council District		
	*	BALTIMORE COUNTY
Mark and Patricia Sauerwald		
Petitioners	*	CASE NO. 2012-0045-A

* * * * *

ORDER AND OPINION

This matter comes before the Administrative Law Judge as a Petition for Administrative Variance filed by the legal owners of the property, Mark and Patricia Sauerwald. Resolution 91-11 concerning the public disclosure of Patricia Sauerwald, an employee of the Baltimore County Board of Education, was approved at the County Council meeting held on September 6, 2011. The Petitioners are requesting Variance relief pursuant to Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a garage in the rear yard of an existing single family dwelling with a height of 17.5 feet in lieu of the required 15 feet. 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. Petitioners applied for a building permit after Hurricane Isabel; however, with losses suffered were unable to afford the repairs at that time. Petitioners have now indicated that they are able to replace the roof at this time, which has been leaking since approximately 2003. Photographs submitted by Petitioners show the rotted wood and shingles are in dire need of replacement. The additional garage height is necessary to store personal belongings, which have been vulnerable to damage by exposure from the elements. The lot size is 12,597 square feet, zoned D.R.5.5 and is located in the Lynch Point subdivision of Edgemere in Baltimore County.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A comment was received from the Bureau of Development Plans Review, dated September 2, 2011, which indicates:

1. The base flood elevation for this site is 7.7 feet [NAVD 88].
2. The flood protection elevation for this site is 8.7 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.

A comment was also received from the Department of Environmental Protection and Sustainability (DEPS), dated September 22, 2011, and state as follows:

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 an Intensely Developed Area (IDA) of the Chesapeake Bay Critical Area and may be subject to practices that reduce water quality impacts associated with stormwater runoff, commonly referred to as the Critical Area 10% Rule. The project will be reviewed for applicability of the 10% Rule regulations and any required mitigation. By meeting the IDA pollutant

reduction requirements, allowing the request by the applicant will result in minimal impacts to water quality.

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

The subject property is not a waterfront property. There is not a tidal buffer projected onto the property. The current development proposal for the property will be reviewed for application of the IDA 10% pollutant reduction requirements, which will improve buffer functions and conserve fish habitat in proximity to nearby Greenhill Cove and Back River.

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 to construct a detached garage is subject to review for application of the Critical Area IDA pollutant reduction requirements, therefore, is consistent with this goal. Allowing the request will be consistent with established land-use policies provided that the applicants meet any IDA requirements applicable to the proposal.

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

The Petitioner having filed a Petition for Administrative Variance and the subject property having been posted on August 26, 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 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, this 23rd day of September, 2011 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a garage in the rear yard of an existing single family dwelling with a height of 17.5 feet in lieu of the required 15 feet, 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 DPR, dated September 2, 2011, and comments received from DEPS, dated September 22, 2011; copies of which are attached hereto and made a part hereof.
3. 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.
4. The accessory structure shall not be used for commercial purposes.
5. When applying for a building permit, the site plan filed must reference this case and set forth and address the conditions and restrictions of this Order.

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:dlw