

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
S side of Kent Road; 725 feet NW		
of the c/l of Galena Road	*	OFFICE OF ADMINISTRATIVE
15 <sup>th</sup> Election District		
7 <sup>th</sup> Councilmanic District	*	HEARINGS FOR
<b>(1438 Kent Road)</b>		
	*	BALTIMORE COUNTY
Rubert (deceased) and Venus Stump,		
<i>Property Owner</i>	*	
Robert Stump, <i>Contract Purchaser</i>		
Petitioners	*	<b>CASE NO. 2012-0191-A</b>

\* \* \* \* \*

**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 subject property, Rubert (deceased) and Venus Stump. Petitioners are requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a side yard setback of 9 feet in lieu of the required 10 feet, and to permit the construction of a new dwelling on a lot that is 50 feet wide in lieu of the required 55 feet minimum width in a DR 5.5 zone per Section 304 of the B.C.Z.R. 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.

Appearing at the requisite public hearing in support of the variance request were Venus Stump, property owner and Robert Stump, contract purchaser. Also attending was Rick Richardson with Richardson engineering LLC, the professional engineer who prepared the site plan. The file reveals that the Petition was properly advertised and the property was properly posted as required by the Baltimore County Zoning Regulations. No Protestants or other parties were present.

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 Planning dated March 2, 2012, which state:

“The Department of Planning has reviewed the petitioner’s request and accompanying site plan. The pattern of the neighborhood is a mix of double and single lots, therefore this department does not oppose the request subject to the review and approval of architectural elevations by this department prior to the issuance of any building permits.”

Comments were received from the Department of Environmental Protection and Sustainability dated March 20, 2012, which state:

“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 non-waterfront property is located in a Limited Development Area within the Chesapeake Bay Critical Area. Development of this property with a dwelling with less side yard setbacks must comply with a maximum lot coverage limit of 3,125 square feet with mitigation for the lot coverage amount over 25% and must meet a 15% tree cover requirement. Based on this, EPS has determined that adverse impacts on water quality from the pollutants discharged from the proposed development can be minimized pursuant to Critical Area requirements.
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.
3. The proposed development is permitted under the State-mandated Critical Area regulations provided that development is in compliance with all Critical Area requirements. There is currently no lot coverage on the property. Compliance with the Critical Area requirements 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.”

Mr. Richardson proffered on behalf of the Petitioners. He related that Petitioner Venus Stump and her late husband bought the subject property in 1980 and now she wished to sell it to her son, who intends to build his home and reside there. He related that the subject property was developed in 1930 and therefore predated and subsequently could not meet today’s required minimum lot width of 55 feet in a DR 5 zone. Moreover, he noted that the site is bordered in the front on Kent Road and is hemmed in on either side by two double lots. Therefore, he maintains that, without the requested relief, the Petitioners have no where to go for additional footage and cannot utilize the property for its intended and lawful purpose.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Moreover, I find that strict enforcement of the B.C.Z.R. would cause the Petitioners to suffer practical difficulty and undue hardship.

Therefore, I also find that the variances requested can be granted in strict harmony with the spirit and intent of the said regulations, and in such a manner as to grant relief without injury to the public, health, safety, and general welfare. In all manner and respect, the variances requested meet the requirements of Section 307 of the B.C.Z.R. as well as those requirements established in *Cromwell v. Ward*, 102 Md. App. 691 (1995) and *McLean v Soley*, 270 Md. 208 (1973).

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   3   day of April, 2012 by this Administrative Law Judge that Petitioner's Variance request Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a side yard setback of 9 feet in lieu of the required 10 feet, and to permit the construction of a new dwelling on a lot that is 50 feet wide in, 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. Compliance with the ZAC comments made by the Department of Planning dated March 2, 2012, a copy of which is attached hereto and made a part hereof.
3. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability dated March 20, 2012, 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.

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Signed  
LAWRENCE M. STAHL  
Managing Administrative Law Judge  
for Baltimore County

LMS:pz