

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NW side of Bauernschmidt Drive, 150'		
W of Martin Drive (Lot 136)	*	OFFICE OF
15 th Election District		
6 th Council District	*	ADMINISTRATIVE HEARINGS
(2315 Martin Drive)		
	*	FOR
David Bimestefer, <i>Legal Owner</i>		
David and Cheryl Dansberger,	*	BALTIMORE COUNTY
<i>Contract Purchaser/Lessee</i>		
Petitioners	*	CASE NO. 2012-0205-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Variance filed by the legal owner, David Bimestefer, and the contract purchaser/lessee, David and Cheryl Dansberger, the (“Petitioners”). The Petition for Variance seeks variance relief from Sections 1B02.3.C.1, 303.1 and 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) and Section 1B02.3.C.2.c of the Zoning Commissioner’s Policy Manual (ZCPM), to permit a proposed dwelling with a lot area of 7,125 square feet, a lot width of 57 feet and an averaged street setback of 30 feet (Bauernschmidt Drive) in lieu of the minimum required 10,000 square feet, 70 feet and averaged 39.5 feet, respectively, and to permit an existing accessory building (garage) to be located in the front yard in lieu of the permitted rear yard only. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 2.

Appearing at the public hearing in support of the requested relief was Scott Chilton, builder, on behalf of the Petitioners. The file reveals that the Petition was properly advertised and the property was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other persons in attendance.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A comment was received from the Department of Environmental Protection and Sustainability (DEPS), dated March 30, 2012, which indicated the following:

“EPS 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 setbacks must comply with a maximum lot coverage limit of 2,281 square feet with mitigation for the lot coverage amount over 1,781 square feet and must meet a 15% tree cover requirement. There is currently a parking area and garage on the property; if these features are to remain they must be included in the lot coverage calculations. 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. 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.”

In addition, a comment was received from the Department of Planning, dated March 21, 2012, which stated the following:

“The Department of Planning has reviewed the petitioner’s request and accompanying site plan. This department does not oppose the petitioner’s request or site configuration as shown on the petition and subject site plan. However, the proposed dwelling shall be architecturally finished as if the front and the rear of the dwelling were both “front” sides of the structure. It is understood that functionally and for address purposes only one side will be the front. Additionally, there shall be no accessory structures erected or placed in the rear yard (Bauernschmidt Road side) of the proposed lot.”

Scott Chilton testified on behalf of the Petitioners. He stated that the subject property consists of 7,125 square feet of an unimproved lot zoned DR 3.5. He acknowledged that the site does not contain the minimum required 10,000 square feet required under the regulations; but noted for the record that no single lot in the immediate area has the required minimum square footage. The Petitioner lives directly across Martin Drive from the subject lot, which has an accessory garage on it which Petitioner would like to remain and be used in conjunction with the proposed new structure. He further stated that there is public water and sewage coming from Martin Drive. Therefore, to retain the accessory structure and still connect the sewer system to the proposed house, the net would result place the said existing garage in the front of the subject lot. Without the requested variance, the existing accessory structure would have to be removed.

Mr. Chilton further stated that the front setback of the adjacent structures is measured from Bauernschmidt Drive at 47 feet, to which they agree. Since the County measured from Martin Drive the 47 feet setback will result in the front of the proposed new structure lining up with the rear of its adjacent neighbors. There is no difficulty concerning the rear setback. He notes that his neighbor at 2226 Bauernschmidt Drive is connected to the Martin Drive sewer system.

Turning to the lot size, the witness noted that the various lots in the area were drawn in the 1900s, long before the DR 3.5 zone was imposed on the area. The subject site is the only undeveloped lot in the immediate area. The Petitioner wishes to construct a 28 feet x 40 feet two story rancher with no basement, slab on grade. Further, he noted that the elevation is higher than needed and far enough away that grading will present no difficulty and will aesthetically fit into the immediate area.

In sum, the witness opined that the physical position of the subject lot in reference to its neighbors, the already existing structure on site, and the already existing septic system render it

unique. Without the requested variance, the project cannot go forward.

Based on the evidence presented, I find that the variance 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). I find based on the testimony presented that the property is unique. I also find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County this 8 day of May, 2012 that the Petition for Variance relief from Sections 1B02.3.C.1, 303.1 and 400.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") and Section 1B02.3.C.2.c of the Zoning Commissioner's Policy Manual (ZCPM), to permit a proposed dwelling with a lot area of 7,125 square feet, a lot width of 57 feet and an averaged street setback of 30 feet (Bauernschmidt Drive) in lieu of the minimum required 10,000 square feet, 70 feet and averaged 39.5 feet, respectively, and to permit an existing accessory building (garage) to be located in the front yard in lieu of the permitted rear yard only, be and is hereby GRANTED.

The relief granted herein is subject to the following conditions:

1. Petitioners are advised that they may apply for any required building permits 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 the 30-day appeal period from the date of 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 comment received from the Department of Environmental Protection and Sustainability dated March 30, 2012, a copy of which is attached hereto and made a part hereof.
3. Petitioners shall comply with the ZAC comment received from the Department of Planning dated March 21, 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.

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

LMS/pz