

**IN RE: PETITION FOR VARIANCE**  
SE side of Bay Drive, 975' NE of  
Chesapeake Road  
15<sup>th</sup> Election District  
6<sup>th</sup> Council District  
**(3643 Bay Drive)**

Timothy W. Starkey  
Petitioner

\* BEFORE THE  
\* OFFICE OF ADMINISTRATIVE  
\* HEARINGS FOR  
\* BALTIMORE COUNTY  
\* **CASE NO. 2012-0300-A**

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**ORDER AND OPINION**

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by the legal owner, Timothy W. Starkey. The Petitioner is requesting Variance relief from §§ 1A04.3.A and 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to permit a replacement dwelling with a height of 44'<sup>1</sup> in lieu of the maximum allowed 35', and to permit an accessory structure (gazebo) to be located in the side yard in lieu of the permitted rear yard only. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support for this case was Petitioner Timothy W. Starkey, Bernadette Moskunus of Site Rite Surveying, the professional land surveyor who prepared the site plan, Ben Battaglia with Battaglia Homes, and John Schmidt, Zoning Chairman of the Bowleys Quarters Improvement Association. Lawrence E. Schmidt, Esquire, attended as attorney for the Petitioner. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. Appearing in

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<sup>1</sup> Although the petition as filed sought relief for a 52' height, Petitioner’s counsel explained that the height of the proposed dwelling was in fact 44', and the petition was amended accordingly. As noted later in this Opinion, this amendment was pivotal in gaining the support of the Bowleys Quarters Community Association, one of the community groups representing Bowleys Quarters. See Protestant’s Exhibit 1.

opposition to the request was Janet Walper, President of the Bowleys Quarters Community Association.

Zoning Advisory Committee (ZAC) comments were received and are made a part of the record of this case. A ZAC comment was received from the Department of Planning on June 22, 2012, indicating that Petitioner needed to submit to that Department the following information, so that the agency can make the requisite findings, as required in the RC 5 zone:

1. Photographs of existing adjacent dwellings.
2. Submit building elevations (all sides) of the proposed dwelling to this department for review and approval prior to the hearing. The proposed dwelling shall be compatible in size and architectural detail as that of the existing dwellings in the area. Ensure that the exterior of the proposed building(s) uses the same finish materials and architectural details on the front, side, and rear elevations. Use of quality material such as brick, stone, or cedar is encouraged.
3. Design all decks, balconies, windows, dormers, chimneys, and porches as a component of the building following dominant building lines. Decks shall be screened to minimize visibility from a public street.
4. Design all accessory structures at a scale appropriate to the dwelling and design garages with the same architectural theme as the principal building on the site, providing consistency in materials, colors, roof pitch, and style.
5. Provide landscaping along the public road, if consistent with the existing streetscape.

In addition, ZAC comments were submitted from the Department of Environmental Protection and Sustainability (DEPS) dated June 15, 2012, indicating that Petitioner was obliged to comply with certain Critical Area regulations, as set forth in B.C.Z.R. § 500.14.

A ZAC comment was also received from the Bureau of Development Plans Review dated May 31, 2012 indicating that Petitioner must comply with Baltimore County's various floodplain regulations and building code requirements.

Testimony and evidence revealed that the subject property is 2.0+/- acres (87,555 square feet) and zoned RC 5. At present, the property is vacant, although it was improved with a single

family dwelling that was razed some time after Hurricane Isabel. The Petitioner acquired the lot last year, and would like to construct a large single family dwelling on the site, as shown in Petitioner's Exhibit 4. Though no setback variances are required, the Petitioner does require a height variance and an accessory structure (gazebo) location variance to build the home as proposed.

Based upon the testimony and evidence presented, I will grant the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Trinity Assembly of God v. People's Counsel*, 407 Md. 53, 80 (2008).

Petitioner has met this test.

As shown on Petitioner's Exhibit 2, the Bowleys Quarters area was designed and developed (with rare exceptions) with 50' lot widths and small size lots. This case presents one of the rare exceptions: Petitioner's lot is two acres in size, and is 250' wide at Bay Drive, and 300' wide at the waterfront. In addition, the lot has an irregular shape, with a small "appendage" on the southeast side of the lot. These factors are more than sufficient to render the property unique.

The Petitioner would experience a practical difficulty if the regulations were strictly enforced, since he would be unable to construct the home as planned. Finally, I do not believe the zoning relief will be detrimental to the community's health, safety and welfare. Petitioner indicated his immediate neighbors are supportive of his request and both community associations in the area as well. Originally, the Bowleys Quarters Community Association was opposed to the proposed height, but Ms. Walper (President of Bowleys Quarters Community Association) explained that after reviewing the elevation drawings her Association could support the request.

The Petitioner mistakenly included the cupola in the calculation of the dwelling's height, and in fact the proposed height of the structure is 44'. See B.C.Z.R. § 300.1 ("height limitations of these regulations shall not apply to...cupolas"). With respect to the gazebo, the side yard placement greatly benefits the adjoining neighbors, whose views of the waterfront will not be blocked, as shown on Exhibit 1.

One final note is in order, concerning the ZAC comment submitted by the Department of Planning. Unfortunately, I think that Department has received conflicting advice from this Office concerning the standards and findings required for new construction in the RC 5 zone. While it may be that in a Hearing Officer's Hearing on a development plan the Department of Planning would submit such findings to the Office of Administrative Hearings prior to the issuance of an order in the case, that is not practical (or maybe even possible) in the context of a zoning hearing involving a single lot of record. Petitioners in such hearings simply have not prepared detailed plans and/or elevations with sufficient detail (nor should they go to such expense until they know they have been granted zoning relief) to enable the Department of Planning to undertake this review. As such, the relief granted herein will be conditioned upon Petitioner's compliance with these Performance Standards at the time of building permit approval.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence, I find that Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED, this 12 day of July, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance from §§ 1A04.3.A and 400.1 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to permit a replacement dwelling with a height of 44' in lieu of the maximum allowed 35', and to permit an accessory structure (gazebo) to

be located in the side yard in lieu of the permitted rear yard only, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. The Petitioner may apply for a building permit and may be granted same upon receipt of this Order. However the Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.
2. Petitioner must comply with the ZAC comments Bureau of Development Plans Review dated May 31, 2012, and the Department of Environmental Protection and Sustainability dated June 15, 2012, copies of which are attached hereto and made a part hereof.
3. Prior to obtaining a building permit, the Petitioner shall comply with the ZAC comments made by the Department of Planning (relative to the RC5 Performance Standards) dated June 22, 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 \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB:pz