

**IN RE: PETITION FOR ADMIN. VARIANCE**  
NE side of Vandermast Lane; 955 feet N of  
Vandermast Road  
15<sup>th</sup> Election District  
6<sup>th</sup> Councilmanic District  
**(2361 Vandermast Lane)**

Michael and Denise Novak  
*Petitioners*

\* BEFORE THE  
\* DEPUTY ZONING  
\* COMMISSIONER  
\* FOR BALTIMORE COUNTY  
\* **Case No. 2010-0153-A**

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Variance filed by the legal owners of the subject waterfront property, Michael and Denise Novak for property located at 2361 Vandermast Lane. The variance request is from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an accessory structure with a height of 35 feet in lieu of the required maximum of 15 feet. The subject property and requested relief are more particularly described on Petitioners' Exhibit No. 1. Petitioners state that a higher structure is desirable to reduce the footprint of the structure in the Chesapeake Bay Critical Area (C.B.C.A.) so as to reduce the environmental impact. Due to the irregular shape of the lot, the C.B.C.A. buffers that are on the land, and the required setbacks, it creates a narrow buildable area. Rather than requesting a setback variance, it is necessary to build a second story to accommodate the desired size of the improvements. In addition, Petitioners state that the proposed accessory structure will have a height that is in accordance with the regulations if it were a principal residence. Finally, Petitioners state that the size of the property will not create an overcrowding of the land or over development and the accessory structure will not adversely impact the health, safety or welfare of the neighborhood.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated December 8, 2009, which indicates that they have concern over the size and scale of such a garage. They recommend that architectural elevations be submitted to the Planning Office for review and approval prior to the signing of a Zoning Commissioner's Order. Furthermore, the Office recommends that the accessory structure not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, or kitchen or bathroom facilities, and not be used for commercial purposes. Comments received from the Department of Environmental Protection and Resource Management dated December 23, 2009 indicates that development of the property must comply with the Chesapeake Bay Critical Area Regulations.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on November 15, 2009 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioners have 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 Deputy Zoning Commissioner, 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. Maintaining an accessory structure is a permitted use and failure to grant the variance would deprive them of a reasonable use of their property. *See, Belvoire Farms v. North* 355 Md. 259 (1999).

Petitioners propose to construct a substantially sized accessory structure to be located in the rear yard. The site plan shows an accessory structure containing a two-vehicle garage located on either side of the structure, two storage rooms located on either side next to the garages, and a recreation room in the center of the structure. The recreation room has paved patios located on either side of the rear portion of the recreation room. A landscaped island is located in front of the proposed structure.

The Zoning Commissioner or Deputy Zoning Commissioner is empowered to impose restrictions upon the granting of any relief pursuant to Section 32-2-301(c) of the Baltimore County Code for the protection of the surrounding and neighboring properties. A number of restrictions are appropriate here, given the size of the accessory structure and said restrictions are enumerated below.

I find that the property is unique in size, shape and its waterfront location on Sue Creek. Petitioners' property contains 5.54 acres, more or less, zoned R.C.5 and is substantially larger than the other properties in the area.

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**, by the Deputy Zoning Commissioner for Baltimore County, this 6<sup>th</sup> day of January, 2010 that a variance from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow an accessory structure with a height of 35 feet in lieu of the required maximum of 15 feet is hereby **GRANTED**, subject to the following which are conditions precedent to the relief granted herein:

1. The 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, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Architectural elevations of the accessory structure shall be submitted to the Office of Planning for review and approval prior to the issuance of any building permit.
3. The accessory structure shall not be used for commercial purposes.
4. 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.
5. It is expressly agreed and understood by the Petitioners that the subject accessory structure shall indeed be built and utilized as an accessory building or structure as those terms are defined in Section 101 of the B.C.Z.R. The accessory structure as shown on Petitioners' Exhibit 1 shall be limited to uses accessory to the residential use of the property and the existing single-family dwelling thereon.
6. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).
7. When apply for a building permit, the site plan filed must reference this case and set forth and address the conditions and restrictions of this Order.
8. Upon request and reasonable notice, the Petitioners shall permit a representative of the Baltimore County Division of Code Inspections and Enforcement to make periodic inspections of the subject property to ensure compliance with this Order.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

\_\_SIGNED\_\_\_\_\_  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz