

**IN RE: PETITION FOR ADMIN. VARIANCE**

N side Chestnut Road, 540 feet NE  
of the c/l of Seneca Road  
15<sup>th</sup> Election District  
6<sup>th</sup> Councilmanic District  
**(4020 Chestnut Road)**

David L. and Marie I. Burford  
*Petitioners*

\* BEFORE THE  
\* OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\* FOR BALTIMORE COUNTY  
\* **Case No. 2011-0265-A**

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before this Office of Administrative Hearings for Baltimore County as a Petition for Administrative Variance filed by the legal owners of the subject property, David L. and Marie I. Burford for property located at 4020 Chestnut Road. The variance request is from Sections 400.1, 400.3, 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“B.C.Z.R.”) and Section 400.1.d(2) of the Zoning Commissioner’s Policy Manual to permit an accessory structure (garage) with a height of 24 feet and setback of 29 feet to the centerline of a street and 1 foot from the side property line in lieu of the required 15 feet, 75 feet and 2.5 feet, respectively. The subject property and requested relief are more particularly described on Petitioners’ Exhibit No. 1. Petitioners desire to construct a new modern detached garage as replacement for an old block garage. The existing garage was constructed in 1946 and contains 294 square feet. The new garage measures 24 feet x 33 feet and contains 840 square feet with a second floor to be a playroom for the Petitioners’ three children. The existing garage has a sink and electric and the proposed new garage will have a sink, toilet and electric. The accompanying site plan illustrates that a block shed located close to the dwelling, a 2.5 feet wide concrete walkway between the garage and the dwelling, and walkways around the house to be removed.

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 Environmental Protection and Sustainability dated March 31, 2011. 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, they offer the following comments:

1. This waterfront property is located in a Limited Development Area and a Buffer Management Area within the Chesapeake Bay Critical Area. Development of this property must comply with a maximum lot coverage limit of 31.25% with mitigation for the lot coverage amount over 25%, must meet restrictions on development within the 100-foot tidal buffer, and must meet a 15% tree cover requirement. Based on this, DEPS has determined that adverse impacts on water quality from the pollutants discharged from the proposed development can be minimized with compliance and mitigation pursuant to Critical Area requirements. Mitigation requirements may include removal of lot coverage and the planting of native trees and shrubs.
2. The proposed development must comply with all LDA and BMA 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. Lot coverage on the property and within the tidal buffer is limited. Compliance with the Critical Area requirements, and mitigation 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.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on March 20, 2011, 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 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.

I will permit the Petitioners to have a sink and toilet in the new detached garage as the second floor of the garage will be used as a playroom for the Petitioners' children. The new garage is approximately 120 feet from the dwelling. I will require conditions that the garage shall not be converted into a dwelling unit or apartment, not contain living quarters and shall 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, by the Administrative Law Judge for Baltimore County, this 11<sup>th</sup> day of April, 2011 that a variance from Sections 400.1, 400.3, 1A04.3.B.2.b of the Baltimore County Zoning Regulations ("B.C.Z.R.") and Section 400.1.d(2) of the Zoning Commissioner's Policy Manual to permit an accessory structure (garage) with a height of 24 feet and setback of 29 feet to the centerline of a street and 1 foot from the side property line in lieu of the required 15 feet, 75 feet and 2.5 feet, respectively is hereby GRANTED, subject to the following:

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. 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 or kitchen facilities.
3. The accessory structure shall not be used for commercial purposes.

4. This waterfront property is located in a Limited Development Area and a Buffer Management Area within the Chesapeake Bay Critical Area. Development of this property must comply with a maximum lot coverage limit of 31.25% with mitigation for the lot coverage amount over 25%, must meet restrictions on development within the 100-foot tidal buffer, and must meet a 15% tree cover requirement.
5. The proposed development must comply with all Limited Development Area and Buffer Management Area requirements, including the 15% afforestation requirement and Chesapeake Bay Critical Area lot coverage requirements, prior to building permit approval.
6. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

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

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Signed  
TIMOTHY M. KOTROCO  
Administrative Law Judge  
for Baltimore County

TMK:pz