

IN RE: PETITION FOR ADMIN. VARIANCE

NE side of Louth Road, 236 feet E of
Sollers Point Road
12th Election District
7th Councilmanic District
(3407 Louth Road)

David F. and Deborah E. Adams
Petitioners

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2011-0372-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings as a Petition for Administrative Variance filed by the legal owners of the subject property, David F. and Deborah E. Adams for property located at 3407 Louth Road. The variance request is from Section 301.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed open projection (screened deck) with a rear yard setback of 3 feet in lieu of the minimum required 22.5 feet. The subject property and requested relief are more particularly described on Petitioners’ Exhibit No. 1. The dwelling was constructed with sliders at the location of the proposed screened deck. The actual front door of the dwelling does not face Louth Road. The subject property is a trapezoid-shaped property containing approximately 6,656 square feet or .152 acre, more or less, and zoned D.R.5.5. The property has a depth on the west side of 100 feet and on the east side of 110 feet. It is 48 feet wide fronting Louth Road and is 82 feet wide to the rear of the property.

In Case No. 2008-0147-A, Petitioners were granted variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling with a front yard setback of 15 feet, a side yard setback (side street) of 18 feet, and a rear yard setback of 10 feet in lieu of the required 25 feet, 25 feet, and 30 feet, respectively. The variance relief was granted by then Deputy Zoning Commissioner Thomas Bostwick on January 3, 2008.

In that case, the Office of Planning was not opposed to Petitioners' request to orientate the front of the home to the side yard, provided that Petitioners place an appropriate window on the side of the house facing Louth Road, along with landscaping.

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 July 29, 2010. The subject property is located within the Chesapeake Bay Critical Area. According to B.C.Z.R. Section 500.14, no decision shall be rendered on any petition for special exception, zoning variance, or zoning special hearing for a property within the Critical Area until the Department of Environmental Protection and Sustainability (DEPS) has provided written recommendations describing how the proposed request would:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

The subject property is located within an Intensely Developed Area (IDA) of the Chesapeake Bay Critical Area and may be subject to practices that reduce water quality impacts associated with stormwater runoff, commonly referred to as the Critical Area 10% Rule. According to the applicant's plan, impervious surfaces will be increased by 200 square feet. The project will be reviewed for application of the Critical Area 10% Rule. By meeting the IDA pollutant reduction requirements, allowing the rear (side) yard setback reduction requested by the applicant will result in minimal impacts to water quality.

2. Conserve fish, wildlife, and plant habitat; and

The subject property is not a waterfront property. There is not a tidal buffer projected onto the property. The current development proposal for the property will be reviewed for application of the IDA 10% pollutant reduction requirements, which will improve buffer functions and conserve fish habitat in proximity to nearby Bear Creek.

3. Be consistent with established land use policies 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 applicant's proposal to construct an attached, screened deck to the dwelling is subject to review for application of the Critical Area IDA requirements, therefore, is consistent with this goal. The setback requested will be consistent with established land-use policies provided that the applicants meet any IDA requirements applicable to the proposal.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on July 10, 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.

The subject property abuts a gravel pathway on the west side of the property -- almost making the property appear as a corner lot -- and the rear of the property abuts Concrete Homes Park, owned by the County. The house maintains the appearance of a front façade, with a door and entrance elements, windows and landscaping on Louth Road even if the actual orientation was changed to front the park pathway. The file contains a letter of no objection from Gary Vallani who resides at 3409 Louth Road.

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 5th day of August, 2011 that a variance from Section 301.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed open projection (screened deck)

with a rear yard setback of 3 feet in lieu of the minimum required 22.5 feet be and 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. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability dated July 29, 2011, 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
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz