

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/Side of Greenbank Road, 153 ½' from		
c/line of East Greenbank	*	OFFICE OF ADMINISTRATIVE
15 th Election District		
6 th Councilmanic District	*	HEARINGS FOR
(7420 Greenbank Road)		
	*	BALTIMORE COUNTY
John M. and Michele R. McMillion, Jr.		
<i>Petitioners</i>	*	CASE NO. 2011-0231-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by the legal owners of the subject waterfront property, John M. McMillion, Jr., and his wife, Michele R. McMillion. Petitioners are requesting Variance relief from Section 400.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”). to permit a garage in the rear yard of an existing single family dwelling with a height of 19 feet in lieu of the required 15 feet. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were Petitioners John and Michele McMillion as well as John Sullivan who is assisting the Petitioners in the zoning process. The record in this case reflects that the subject property was properly posted and advertised as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is rectangular in shape, contains approximately 16,000 square feet or 0.367 acre, more or less, zoned R.C.5. The property is located in the Oliver Beach subdivision area of Baltimore County.

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 (DEPS) dated March 3, 2011 which states that DEPS 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 and offered the following comments:

1. This lot is located within a Limited Development Area (LDA) and Buffer Management Area (BMA) of the Chesapeake Bay Critical Area (CBCA). The proposed garage will be located outside the 100-foot buffer. Lot coverage is limited to 4,952 square feet. Allowing a variance to the height limit is not contrary to CBCA lot coverage limit and the BMA requirements, and will therefore minimize adverse impacts on water quality that result from development activities.
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 will be required to meet all LDA and BMA requirements and therefore will 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.

A ZAC comment was also received from the Office of Planning dated February 17, 2011 which recommends that the accessory structure not be converted into a dwelling unit or apartment, not contain any sleeping quarters, living area, kitchen or bathroom facilities, and not be used for commercial purposes.

Further testimony revealed that the subject site has a design somewhat different from the others in this very old community, has an odd and unique waterfront and otherwise meets all Code requirements. Petitioners are building the structure for storage only and in order to properly utilize the space are requesting the additional height so as to forestall possible injury and health difficulties in utilizing the space properly. They further agree that the premises are to be utilized

for storage only and that they will comply with the Office of Planning directive of February 17, 2011.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request.

I further find that the granting of the relief as set forth herein can be accomplished without injury to the public health, safety, and general welfare. Therefore, in all manner and form, I find that the variance requested 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).

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

THEREFORE, IT IS ORDERED this 23rd day of March, 2011 by this Administrative Law Judge that Petitioner's Variance request from Section 400.3 of the Baltimore County Zoning Regulations ("B.C.Z.R."). to permit a garage in the rear yard of an existing single family dwelling with a height of 19 feet in lieu of the required 15 feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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 his own risk until such time as the 30-day appellate process from 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 Zoning Advisory Committee (ZAC) comments submitted by the Department of Environmental Protection and Sustainability (DEPS) dated March 3, 2011 and the Office of Planning dated February 17, 2011; copies of which are 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

Attachments