

IN RE: PETITION FOR VARIANCE
W side of Cedar Avenue, 436 feet
S of Maple Avenue
15th Election District
7th Councilmanic District
(Lot 86 Cedar Avenue)

Thomas G. Tzomides
Petitioner

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2011-0276-A**

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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 owner of the subject waterfront property, Thomas G. Tzomides. Petitioner is requesting Variance relief under Section 1B01.2.C.1.b Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a front street setback of 5 feet in lieu of the 25 feet required. 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 requisite public hearing in support of the variance request was Petitioner Thomas G. Tzomides. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance at the hearing.

Testimony of the Petitioner and evidence offered by him at the hearing revealed that the subject property was plotted in 1929, well before the imposition of County zoning regulations. It contains 1.74 acres, is irregular in shape, fronts on Muddy Gut Creek, and has water on two sides. The property is served by public water and sewer. Further, it is encumbered and limited by wetlands and required buffers. As a result of these constraints, a permitted use of the site for a

viable residential structure is severely limited and is possible only if the requested variance is granted.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Bureau of Development Plans Review dated March 31, 2011. The comments indicate that the first floor or basement must be at least one foot above the flood plain elevation in all construction, the building should be designed and adequately anchored to prevent flotation or collapse and constructed of materials resistant to flood damage. Flood-resistant construction should be in accordance with the Baltimore County Building Code which adopts the International Building Code. Comments were received from the Department of Environmental Protection and Sustainability dated April 18, 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 within the Chesapeake Bay Critical Area and must comply with all requirements of Baltimore County Code Article 33, Title 2 Chesapeake Bay Critical Areas Protection. Development of this property must comply with a maximum lot coverage limit of 15% and must meet a 15% forest cover requirement. In addition, the required Critical Area buffer covers the entire property, and the site must meet all requirements of COMAR 27.01.09 Habitat Protection Areas in the Critical Area including recordation of a Critical Area buffer with a declaration of protective covenants, and mitigation for forest, tree, and buffer impacts. A Critical Area administrative variance (CAV) application is currently under review in DEPS. Please be advised that all criteria must be met for any CAV variance approval. The dwelling setbacks requested in this zoning item would allow for minimization of Critical Area buffer impacts for development of this site. 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 the planting of native trees and shrubs, the recordation of a Critical Area buffer (a non-disturbance area), and payment of a fee-in-lieu of planting that cannot be accomplished on-site.
2. The subject development can meet the requirement to conserve fish, wildlife, and plant habitat by bringing the site into compliance with all Critical Area requirements and through mitigation.

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 and buffer impacts on the property are limited. Compliance with the Critical Area requirements, including recordation of a buffer 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.

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). *McLean v Soley*, 270 Md. 208 (1973).

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 10 day of May, 2011 by this Administrative Law Judge that Petitioner's Variance requests from Section 1B01.2.C.1.b Baltimore County Zoning Regulations ("B.C.Z.R.") to allow a front street setback of 5 feet in lieu of the 25 feet required be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is 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, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

2. The base flood elevation for this site is 7.7 feet [NAVD 88].
3. The flood protection elevation for this site is 8.7 feet.
4. In conformance with Federal Flood Insurance Requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.
5. The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.
6. The building engineer shall require a permit for this project.
7. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
8. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.
9. This waterfront property is located in a Limited Development Area within the Chesapeake Bay Critical Area and must comply with all requirements of Baltimore County Code Article 33, Title 2 Chesapeake Bay Critical Areas Protection.
10. Development of this property must comply with a maximum lot coverage limit of 15% and must meet a 15% forest cover requirement. In addition, the required Critical Area buffer covers the entire property, and the site must meet all requirements of COMAR 27.01.09 Habitat Protection Areas in the Critical Area including recordation of a Critical Area buffer with a declaration of protective covenants, and mitigation for forest, tree, and buffer impacts.

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