

IN RE: PETITION FOR ADMIN. VARIANCE

NE side of Bletzer Road; 530 feet SE
of the c/l of Glenhurst Road
15th Election District
7th Councilmanic District
(8322 Bletzer Road)

Kevin J. and Susanne V. Machlinski
Petitioners

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2012-0170-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 waterfront property, Kevin J. and Susanne V. Machlinski. The variance request is from Sections 400.1, 400.3 and 303.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed detached accessory structure (garage) to be located in the front yard, and with a height of 25 feet, and a front yard average setback of 19 feet in lieu of the required rear yard, maximum allowed 15 feet height, and front yard average of 40 feet, respectively. The subject property and requested relief are more particularly described on Petitioners’ Exhibit No. 1.

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 February 15, 2012, which state:

“The subject property is located within the Chesapeake Bay Critical Area. According to BCZR 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 (EPS) 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 a Limited Development Area (LDA), and is subject to Critical Area lot coverage requirements. Critical Area lot coverage differs from BCZR lot coverage and is defined in Natural Resources Article §8-1802(a)(17), as follows:

(17) (i) "Lot coverage" means that percentage of total lot or parcel that is:

- 1. Occupied by a structure, parking area, driveway, walkway, or roadway; or*
- 2. Covered with gravel, stone, shell impermeable decking, a paver, permeable pavement, or any manmade material.*

(ii) "Lot coverage" includes the ground area covered or occupied by a stairway or impermeable deck.

(iii) "Lot coverage" does not include:

- 1. A fence or wall that is less than 1 foot in width that has not been constructed with a footer;*
- 2. A walkway in the buffer or expanded buffer, including a stairway, that provides direct access to a community or private pier;*
- 3. A wood mulch pathway; or*
- 4. A deck with gaps to allow the water to pass freely.*

The petitioner is requesting a height and setback variance for a proposed accessory structure. In order to minimize impacts on water quality, the applicant should comply with the LDA lot coverage requirement, which, for a property this size, is 25%. With approval and mitigation, this amount may be exceeded up to 31 ¼% of the property size. The property is also located within a Buffer Management Area (BMA), which further restricts impervious surfaces and structures within 100 feet landward of mean high tide (100 foot buffer). According to the plan submitted for this review, there are no proposed impervious surfaces within the 100-foot buffer, however, the proposed, overall lot coverage may exceed the 31 ¼% limit. This limit must be maintained and mitigation for the amount of lot coverage between 25% and 31 ¼% may be required; therefore, by allowing the items requested by the petitioner, impacts on water quality will be minimized.

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

The current development proposal for the property will be reviewed for application of the LDA and BMA requirements, which will improve buffer functions, and conserve fish, wildlife and plant habitat in Galloway 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 height and front yard setback requested will be consistent with established land use policies, provided that the applicants meet any LDA and BMA requirements applicable to the proposal. The request, if granted, will avoid environmental impacts."

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on February 4, 2012, 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.

Although the Office of Planning did not make any recommendations related to the garage height and usage, I will impose conditions 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.

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 28 day of February, 2012 that a variance from Sections 400.1, 400.3 and 303.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed detached accessory structure (garage) to be located in the front yard, and with a height of 25 feet, and a front yard average setback of 19 feet in lieu of the required rear yard, maximum allowed 15 feet height, and front yard average of 40 feet, respectively, 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. 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.
3. The accessory structure shall not be used for commercial purposes.
4. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability dated February 15, 2012, 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