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| IN RE: PETITION FOR ADMIN. VARIANCE | * | BEFORE THE |
| SW of Denton Avenue; 465 feet SE of | | |
| the c/l of North Point Road | * | OFFICE OF ADMINISTRATIVE |
| 15 th Election District | | |
| 7 th Council District | * | HEARINGS FOR |
| (7815 Denton Avenue) | | |
| | * | BALTIMORE COUNTY |
| John W. and Michelle L. Grace | | |
| <i>Petitioners</i> | * | CASE NO. 2012-0268-A |

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ORDER AND OPINION

This matter comes before the Administrative Law Judge as a Petition for Administrative Variance filed by the legal owners of the property, John W. and Michelle L. Grace. The Petitioners are requesting Variance relief from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a garage with a side yard setback of 1.5 feet and a height of 18 feet, and an attached screened-in porch with a side yard setback of 1.5 feet in lieu of the required 2.5 feet and 15 feet, respectively. 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.

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 May 7, 2012, which indicate that the first floor or basement must be at least one foot above the flood plain elevation in all construction, the building must be designed and adequately anchored to prevent flotation or collapse and constructed of materials resistant to flood damage. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code. Comments were received from the Department of Environmental Protection and Sustainability dated May 18, 2012:

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. Lot coverage is as defined in State of Maryland Natural Resources Article §8-1802(a)(17). The applicant is proposing to construct a garage with a screened porch within the same footprint as an existing garage, and concrete pad. There can be no increase in lot coverage on the property, and the structures must remain the same distance from the bulkhead (mean high water). For example, there can be no additional driveway added to connect the existing driveway and the garage. Provided that the applicant meets all LDA, and Buffer Management Area (BMA) requirements, water quality impacts can be minimized in this proposal.

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

This waterfront property is located within a BMA of the Critical Area. The applicant's plan accompanying this zoning petition shows that the proposed garage and screened porch are located entirely within the 100-foot tidal buffer, but are within the same footprint as the existing garage, and concrete patio. Impacts to the tidal buffer must meet all BMA requirements for location but the proposed side yard setbacks would not affect those requirements. Following BMA requirements will maintain existing buffer functions and conserve fish habitat in Shallow 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 a replacement garage with a screened porch on this waterfront property is consistent with this goal. The relief requested will be consistent with established land-use policies provided that the applicants meet the requirements stated above.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on May 6, 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, this 4 day of June, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance from Sections 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a garage with a side yard setback of 1.5 feet and a height of 18 feet, and an attached screened-in porch with a side yard setback of 1.5 feet in lieu of the required 2.5 feet and 15 feet, respectively, 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 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, 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 garage into a dwelling unit or apartment. The structure shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The garage shall not be used for commercial purposes.
4. Compliance with the ZAC comments made by the Bureau of Development Plans Review dated May 7, 2012, a copy of which is attached hereto and made a part hereof.
5. Compliance with the ZAC comments made by the Department of Environmental Protection and Sustainability dated May 18, 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
LAWRENCE M. STAHL
Managing Administrative Law Judge for
Baltimore County

LMS:pz