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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE |
| S side of Cold Spring Road; 580' from | | |
| East of the c/line of Galloway Road | * | OFFICE OF ADMINISTRATIVE |
| 15 th Election District | | |
| 6 th Councilmanic District | * | HEARINGS FOR |
| (1113 Cold Spring Road) | | |
| | * | BALTIMORE COUNTY |
| Stephanie Klaben | | |
| <i>Petitioner</i> | * | CASE NO. 2012-0008-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 owner of the subject waterfront property, Stephanie Klaben. Petitioner is requesting Variance relief under Sections 1A04.3.B.2.b and 1A04.3.B.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit the following:

- A front yard setback of 60.5 feet from the centerline of the existing road in lieu of the required 75 feet;
- Side West property line setback of 10 feet in lieu of the required 50 feet;
- Side East property line setback of 10 feet in lieu of the required 50 feet, and
- A lot coverage of 18% in lieu of the required 15%.

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 Stephanie Klaben, Mark Klaben and Brian Dietz from Dietz Surveying Co., the consulting firm that prepared the site plan. Edward C. Covahey, Jr. with Covahey, Boozer, Devan & Dore, P.A. appeared as counsel and represented the Petitioner. The file reveals that the Petition was properly

advertised and the property was properly posted as required by the Baltimore County Zoning Regulations. No Protestants or other parties were present.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning on August 2, 2011 and based on this review, they offer the following comments:

“The Office of Planning has reviewed the petitioner’s request and accompanying site plan. The Office of Planning does not oppose the petitioner’s request. However, this office is required to provide a statement of finding to the Administrative Law Judge indicating how the proposed construction complies with the current RC 5 requirements. To prepare the statement of finding, the following information must be submitted to this office prior to the application for any building permits:

1. Photographs of existing adjacent dwellings.
2. Submit building elevations (all sides) of the proposed dwelling to this office for review and approval prior to the hearing. The proposed dwelling shall be compatible in size and architectural detail as that of the existing dwellings in the area. Ensure that the exterior of the proposed building(s) uses the same finish materials and architectural details on the front, side, and rear elevations. Use of quality material such as brick, stone, or cedar is encouraged.
3. Design all decks, balconies, windows, dormers, chimneys, and porches as a component of the building following dominant building lines. Decks shall be screened to minimize visibility from a public street.
4. Design all accessory structures at a scale appropriate to the dwelling and design garages with the same architectural theme as the principal building on the site, providing consistency in materials, colors, roof pitch, and style.
5. Provide landscaping along the public road, if consistent with the existing streetscape.”

Comments were also received from the Department of Environmental Protection and Sustainability (DEPS) and indicate as follows:

“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.*

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 to 31 ¼%. 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, the proposed lot coverage is below the 25% limit and there are no proposed impervious surfaces or structures within the 100 foot buffer, 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 side and front yard setbacks and lot coverage areas 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.”

In addition, comments were received from the Bureau of Development Plans Review, dated July 22, 2011, and state as follows:

“The base flood elevation for this site is 8.5 feet [NAVD 88].

The flood protection elevation for this site is 9.5 feet.

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.

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.

The building engineer shall require a permit for this project.

The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with 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.*”

At the beginning of the hearing, Petitioner withdrew her request for variance for lot coverage of 18% in lieu of 15%. Mr. Covahey proffered testimony on behalf of the Petitioner. He described the property as R.C.5 located on Galloway Creek. The property is part of the Bowleys subdivision created in 1921 and is already improved by an existing “shore shack”. The property is connected to public water and sewer and the proposed reconstruction would not result in any additional demand therein other than that already required by the property.

He proffered the qualifications as an expert of Brian Dietz of Dietz Surveying and offered that the witness would testify that the construction of the proposed replacement structure could not be carried out without the requested variances. Counsel further proffered on Dietz's behalf that the existing structure was situated such that only approximately 2 ½ feet of additional space would be required on either side for the new structure. He stated that the front setback would remain the same.

Counsel then addressed the requirements for a variance, directing attention to the plat to accompany the petition (Petitioner's Exhibit 1) and an aerial view of the general area containing the subject site (Petitioner's Exhibit 3) to support the witnesses uncontested testimony and opinion that the subject property has an irregular water side configuration from its neighbors. That observation, along with the existing size and setbacks of the present structure is, in Mr. Dietz's testimony, the basis for a finding of uniqueness. Counsel then referred to the construction issues proffered on behalf of the witness Dietz to establish Petitioner's arguments addressing Cromwell v. Ward and Section 307.1 of the Baltimore County Zoning Regulations. He finally offered that the requested variance and resulting construction of Petitioner's proposed structure, so similar in nature and size to the existing building, would not in any way result in injury to the public health, safety and welfare.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested relief. As to the variance, 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 6th day of September, 2011 by this Administrative Law Judge that Petitioner's Variance requests from Sections 1A04.3.B.2.b and 1A04.3.B.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit the following:

- A front yard setback of 60.5 feet from the centerline of the existing road in lieu of the required 75 feet;
- Side West property line setback of 10 feet in lieu of the required 50 feet, and
- Side East property line setback of 10 feet in lieu of the required 50 feet,

be and are hereby GRANTED.

IT IS FURTHER ORDERED that the Variance request for lot coverage of 18% in lieu of 15% is DISMISSED AS MOOT.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her 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. Petitioner shall comply with the Zoning Advisory Committee (ZAC) comments received from the Office of Planning, Department of Environmental Protection and Sustainability (DEPS) and Bureau of Development Plans Review, dated August 1, 2011, August 4, 2011, and July 22, 2011 respectively; copies of which are attached 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:dlw