

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
S side of Waldman Avenue, 437.5' E of		
the c/line of Murray Avenue	*	OFFICE OF
15 th Election District		
7 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
(7317 Waldman Avenue)		
	*	FOR BALTIMORE COUNTY
Amber M. and James S. Bertholdt, Jr.		
<i>Petitioners</i>	*	Case No. 2012-0031-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings as a Petition for Administrative Variance filed by the legal owners of the subject property, Amber M. and James S. Bertholdt, Sr. for property located at 7317 Waldman Avenue. The variance request is from Section 301.1.A of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed open projection (deck) with side yard setbacks of 5 feet in lieu of the minimum required 7.5 feet. The subject property and requested relief are more particularly described on Petitioners’ Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of August 29, 2011. On August 19, 2011, Theresa Frey (7319 Waldman Avenue) filed a Formal Demand for Hearing. The hearing was subsequently scheduled for Monday, September 12, 2011 at 10:00 AM in Room 205 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland. In addition, a sign was posted at the property and an advertisement was published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

Appearing at the public hearing in support of the variance request were Petitioners Amber and James Bertholdt. Appearing in opposition to the request were the next door neighbors, Keith and Theresa Frey.

Testimony and evidence revealed that the subject property consists of 0.229 acres, more or less, and is zoned D.R.5.5. The property is located on the south side of Waldman Avenue in the

Sparrows Point area of Baltimore County. It has a street address of 7317 Waldman Avenue. The owners of the property, Amber and James Bertholdt are interested in constructing a deck on the east side of their home adjacent to the property owned by Theresa and Keith Frey. The deck is proposed to extend 5 feet from the side of the house and would have a length of 12 feet. The site plan submitted into evidence indicates that there would remain a 5 foot setback indicating that the house is situated 10 feet from the common property line shared with the Freys. However at the hearing, the testimony presented by the Petitioners was that they were unaware of the exact distance their house sits from their side yard property line. Mr. and Mrs. Frey quickly testified that the distance is approximately 8 feet and not the 10 feet as represented on Petitioners' Exhibit 1, the site plan submitted into evidence. The Freys are opposed to the construction of this deck on the side of the Bertholdts' dwelling further testifying that the house which was constructed by the Petitioners already sits too close to their common property line.

The Petitioners submitted photographs into evidence showing this particular side of their dwelling where the deck is proposed to be located. It can be seen from those photographs that there currently exist a set of French doors that were a part of the original construction of the home built by the Bertholdt's approximately 18 months ago. It is obvious that these set of double doors were installed on this dwelling with a walk-out deck to be constructed at a later time. There even exists a ledger board underneath the double doors to allow for some sort of deck to be constructed in the future. It is at this time that the Petitioners seek to construct the deck but in order to do so need a variance.

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 September 1, 2011. The subject property is located within the Chesapeake Bay Critical Area. According to B.C.Z.R. 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 (DEPS) has provided written recommendations, which are as follows:

- “1. This waterfront property is located in a Limited Development Area within the Chesapeake Bay Critical Area. Development of this property with a deck with less sideyard setbacks must comply with a maximum lot coverage limit of 3,125 square feet with mitigation for the lot coverage amount over 25% and must meet a 15% tree cover requirement. If the deck is constructed with spaces between the boards and nothing placed beneath it, it can be considered pervious and not counted towards the lot coverage limit. Based on this, DEPS has determined that adverse impacts on water quality from the pollutants discharged from the proposed development can be minimized pursuant to Critical Area requirements.
2. The proposed development must comply with all LDA 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 is permitted under the State-mandated Critical Area regulations provided that development is in compliance with all Critical Area requirements. Lot coverage on the property is currently within allowable limits and the requisite number of trees are on site. Compliance with the Critical Area requirements 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.”

After considering the testimony and evidence offered by the property owner as well as Mr. and Mrs. Frey, I find it is appropriate to allow the construction of some type of deck on this side of the Petitioners dwelling. It was obvious from the time the house was constructed that a set of French doors were installed on the east side of the dwelling along with a ledger board for a deck to later be attached to the house. These French doors are outward swinging so it is apparent that it should be appropriate to issue a variance to allow a small deck to be constructed on the side of this dwelling. Given the testimony between these neighbors, I believe it is appropriate to allow a small

3-foot wide deck to be installed on the side of this house, which would provide enough room for the door to swing out and open. In essence, a 3-foot deck on the side of this home would still sit 5 feet from the side property line given that the house was originally constructed 8 feet off the property line. In essence, the Petitioners' request for variance to allow this deck to have a side yard setback of 5 feet should be granted, keeping in mind that a 5-foot side yard setback only allows the Petitioners to construct a deck that is 3 feet wide x 12 feet long. The site plan that was submitted along with the variance request is misleading in that leads one to believe there is a 10 foot side yard setback when, in reality, there only exists an 8 foot side yard setback.

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

THEREFORE, IT IS ORDERED, by the Administrative Law Judge for Baltimore County, this 19th day of September, 2011 that a Variance from Section 301.1.A of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a proposed open projection (deck) with side yard setbacks of 5 feet in lieu of the minimum required 7.5 feet, 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. Petitioners shall comply with the Zoning Advisory Committee (ZAC) comments, dated September 1, 2011; a copy of which is attached hereto and made a part hereof.
3. The Petitioners shall be permitted to construct a deck that measures 3' x 12' on the side of their dwelling. This will maintain a 5' setback to the Frey's property line.

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/dlw