

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
(4025 Bay Drive)		
15 th Election District	*	OFFICE OF ADMINISTRATIVE
6 th Council District		
Lydia T. Helmer	*	HEARINGS FOR
Petitioner		
	*	BALTIMORE COUNTY
	*	CASE NO. 2013-0205-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Administrative Variance filed by the legal owner of the property, Lydia T. Helmer. The Petitioner is requesting Variance relief from Sections 1A04.3.A, 1A04.3.B.2.b and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a replacement dwelling and accessory (in-law) apartment with a street centerline setback of 65 ft., a side yard setback as close as 4 ft. and a height of 42 ft., in lieu of the minimum required 75 ft., 50 ft. and maximum allowed 35 ft., and to permit an open projection (deck) with a side yard setback of 5 ft. in lieu of the minimum required 37.5 ft. 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.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A ZAC comment was received from the Department of Planning (DOP) dated April 4, 2013, indicating that the petition does not seek approval to operate a “boarding house,” that Petitioner will comply with B.C.Z.R. Sections 101 and 400.4, and that the occupants of the accessory apartment and principal single-family dwelling shall be immediate family, related as grandparents, parents, or parents’ children by blood, marriage or adoption. A ZAC comment was also received from the Department of Environmental Protection and Sustainability

(DEPS) dated March 26, 2013, indicating that Petitioners were obliged to comply with certain Critical Area regulations, as set forth in B.C.Z.R. Section 500.14. In addition, a ZAC comment was received from the Bureau of Development Plans Review (DPR) dated March 22, 2013, indicating that the base flood elevation for the site is 8.5 feet [NAVD 88], and the flood protection elevation is 9.5 feet.

The Petitioner having filed a Petition for Administrative Variance and the subject property having been posted on March 24, 2013, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Petitioner has filed the supporting affidavits as required by Section 32-3-303 of the Baltimore County Code (B.C.C.). 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 Petitioner.

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, variance relief should be granted.

THEREFORE, IT IS ORDERED, this 16th day of April, 2013, by the Administrative Law Judge for Baltimore County, that the Petition for Variance from Sections 1A04.3.A, 1A04.3.B.2.b and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a replacement dwelling with a street centerline setback of 65 ft., a side yard setback as close as 4

ft. and a height of 42 ft., in lieu of the minimum required 75 ft., 50 ft. and maximum allowed 35 ft., and to permit an open projection (deck) with a side yard setback of 5 ft. in lieu of the minimum required 37.5 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for her appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her 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 relief granted herein pertains only to the street centerline, side yard setbacks and height requirements of the RC 5 zone. The administrative special hearing procedure can only be utilized for variances of height and area regulations. As such, approval for an in-law apartment will require a use permit and/or special hearing in the OAH, as set forth in Baltimore County Council Bill No. 49-11.
3. The Petitioner must comply with the ZAC comments submitted from DPR, DEPS, and DOP; copies of which are 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:dlw