

IN RE: PETITION FOR VARIANCE
(6920 River Drive Road)
15th Election District
7th Councilmanic District
Barry and Darlene A. Koluch
Petitioners

* BEFORE THE OFFICE
* OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2013-0056-A**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by the legal owners of the subject property, Barry and Darlene A. Koluch. The Petitioners are requesting Variance relief pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an open porch and steps with a 1' side yard setback in lieu of the required 7.5'. 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.

Appearing at the public hearing held for this case was Barry Koluch, Kathleen Skullney, and Bernadette Moskunas with Site Rite Surveying, Inc., the consultants who prepared the site plan. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received from the Bureau of Development Plans Review (DPR) dated September 17, 2012, indicating that the base flood elevation for this site is 7.7 feet [NAVD 88], the flood protection elevation is 8.7 feet, and all existing structures are presently located in the tidal flood plain. A ZAC comment was also received from the Department of Environmental

Protection and Sustainability (DEPS) dated October 2, 2012, indicating the following:

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 an Intensely Developed Area (IDA) and a Buffer Management Area (BMA) of the Chesapeake Bay Critical Area. The IDA regulations require that the property be subject to practices that reduce water quality impacts associated with stormwater runoff, commonly referred to as the Critical Area 10% Rule. According to the applicant's plan with this petition, impervious surfaces may be increased. The construction of the dwelling has been reviewed for application of the Critical Area 10% Rule during the review of the building permit application, which has been approved by the Environmental Impact Review Section of this Department. The steps and porch on the plan with this petition that are labeled "existing steps from porch" were not shown on the plan with the building permit application, however, the property will be re-inspected when the U&O Certificate is requested. It is unclear from the plan whether impervious surfaces will be increased. The applicants paid a fee-in-lieu of planting prior to issuance of the permit and agreed to install trees prior to release of the U&O Certificate. If applicable, additional mitigation may be required. By meeting the IDA pollutant reduction requirements, allowing the side yard setback reduction requested by the applicant will result in minimal impacts to water quality. The BMA requirements, in part, regulate structures and impervious surfaces within the 100-foot tidal buffer. The project shown on the plan with the petition is outside of the 100-foot buffer and allowing the side yard setback reduction requested by the applicant will result in minimal impacts to water quality.

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

The property will be will be inspected during the U&O process for application of the Intensely Developed Area 10% pollutant reduction requirements, which have already been addressed for building permit approval. Any additional mitigation requirements will be assessed at that time, which will improve buffer functions and conserve fish, wildlife and plant habitat of Greenhill Cove and Back River.

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 side yard porch and steps is subject to review for application of the Critical Area IDA requirements, therefore, is consistent with this goal. The side yard setbacks requested will be consistent with established land-use policies provided that the applicants meet any IDA requirements applicable to the proposal.

Testimony and evidence revealed that the subject property is 8,000 square feet (0.183 acres) and is zoned DR 5.5. The Petitioners have constructed an attractive new home on the site (*See photos, Exhibit 2*), and were informed by a Baltimore County building inspector that the exterior stairs were not in compliance with the B.C.Z.R. As such, the Petitioners were instructed to obtain variance relief to "legitimize" their placement.

Based on the evidence presented, I find that the variance 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). I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Indeed, the home is constructed on a narrow 50' wide lot (as are a great number of waterfront homes in eastern Baltimore County) and it would be nearly impossible to position a set of external stairs without obtaining zoning relief. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners, given that Petitioners would not be able to have the exterior stairs, which accesses the second story of their home. *See Exhibit 2.*

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property and public hearing on this Petition, and for the reasons set forth above, the variance relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 7th day of November, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an open porch and steps with a 1' side yard setback in lieu of the required 7.5', be and is hereby GRANTED.

The relief granted herein shall be conditioned upon and subject to the following:

1. The Petitioners may apply for any required permits and may be granted same upon receipt of this Order; however the Petitioners are hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:dlw