

**IN RE: PETITION FOR ADMIN. VARIANCE
(1907 Cape May Road)**

Stephen E. and Ellen A. Granger
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2013-0050-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, Stephen E. and Ellen A. Granger. 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 accessory structures (shed and garage with second story) to be located in the front and side yards of the principal dwelling in lieu of the required rear, and to permit an accessory structure (garage with second story) to have a height of 24' in lieu of the permitted 15'. 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. ZAC comments were received from the Department of Environmental Protection and Sustainability (DEPS) dated October 2, 2012, indicating:

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 and is subject to Critical Area lot coverage requirements. The applicant is proposing to construct a detached garage and a shed in the side yard. Because of the lot coverage proposed for removal, it appears that the lot coverage proposed can meet requirements with mitigation. By meeting the lot coverage requirements for the entire property, the relief requested by the applicant will result in minimal impacts to water quality. Lot coverage is defined in State of Maryland Natural Resources Article §8-1802(a)(17)

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

This waterfront property is located within a Buffer Management Area (BMA) in the Critical Area. The applicant's plan accompanying this zoning petition shows that the proposed garage, shed, and part of the driveway are located within the 100-foot tidal buffer. Provided that all Critical Area requirements, including mitigation, are met for this activity, existing buffer functions and fish habitat in Hogpen Creek and Middle River can be conserved.

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 the proposed detached garage, and shed in the side yard 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 September 9, 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 Department of Planning did not make any recommendations related to the shed and garage height and usage, I will impose conditions that the accessory structure(s) 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 3rd day of October, 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 accessory structures (shed and garage with second story) to be located in the front and side yards of the principal dwelling in lieu of the required rear, and to permit an accessory structure (garage with second story) to have a height of 24' in lieu of the permitted 15', be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for their appropriate permits 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 shed and garage into a dwelling unit or apartment. The structures shall not contain any sleeping quarters, living area, kitchen or bathroom facilities.
3. The shed and garage shall not be used for commercial purposes.

4. Petitioners shall comply with the ZAC comment received from DEPS, dated October 2, 2012, as noted above.

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