

IN RE: PETITION FOR VARIANCE * BEFORE THE
 E side of Cedar Avenue, 313 feet S from *
 c/l of Maple Avenue * DEPUTY ZONING
 15th Election District *
 7th Councilmanic District * COMMISSIONER
(827 Cedar Avenue) *
 * FOR BALTIMORE COUNTY
 Thomas G. Tzomides *
Petitioner * **Case No. 2009-0032-A**

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IN RE: PETITION FOR VARIANCE * BEFORE THE
 E side of Cedar Avenue, 385 feet S from *
 c/l of Maple Avenue * DEPUTY ZONING
 15th Election District *
 7th Councilmanic District * COMMISSIONER
(829 Cedar Avenue) *
 * FOR BALTIMORE COUNTY
 Thomas G. Tzomides *
Petitioner * **Case No. 2009-0033-A**

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IN RE: PETITION FOR VARIANCE * BEFORE THE
 W side of Cedar Avenue, 331 feet S from *
 c/l of Maple Avenue * DEPUTY ZONING
 15th Election District *
 7th Councilmanic District * COMMISSIONER
(830 Cedar Avenue) *
 * FOR BALTIMORE COUNTY
 Thomas G. Tzomides *
Petitioner * **Case No. 2009-0034-A**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before this Deputy Zoning Commissioner for consideration of Petitions for Variance filed by Thomas G. Tzomides, the legal property owner. In each case, Petitioner is requesting the following variance relief:

Case No. 2009-0032-A: For the property located at 827 Cedar Avenue (Lot 84), the variance request is from Sections 1B02.3 and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a front setback of 10 feet in lieu of 22.5 feet required.

Case No. 2009-0033-A: For the property located at 829 Cedar Avenue (Lot 85), the variance request is from Sections 1B02.3 and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a front setback of 5 feet in lieu of 22.5 feet required.

Case No. 2009-0034-A For the property located at 830 Cedar Avenue (Lot 87), the variance request is from Section 1B02.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a front setback of 10 feet in lieu of 25 feet required.

The subject properties and the requested relief are more fully described on the site plans which were marked and accepted into evidence as Petitioner's Exhibits 1A and 1B and 1C, respectively. In addition, the hearings for each of the cases were heard simultaneously and the evidence was received, collectively, and is hereby incorporated by reference for each of the aforementioned cases.

Appearing at the requisite public hearing in support of the variance requests were Petitioner Thomas G. Tzomides and Richard E. Matz with Colbert Matz Rosenfelt, Inc., the professional engineer who prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the property at 827 Cedar Avenue (Lot 84) is irregular-shaped and contains approximately 21,827.5 square feet or 0.5 acre, more or less, zoned D.R.5.5. A lot line adjustment was requested that would make the property 19,049.75 square feet or 0.44 acre, more or less. The property at 829 Cedar Avenue (Lot 85) is irregular-shaped and contains approximately 22,636.67 square feet or 0.52 acre, more or less, zoned D.R.5.5. Pursuant to the aforementioned lot line adjustment request, this property would become 25,414.41 square feet or 0.58 acre, more or less. The property at 830 Cedar Avenue (Lot 87) is rectangular-shaped and contains approximately 29,185 square feet or 0.67 acre, more or less,

zoned D.R.5.5. The properties are located northeast of Back River near Muddy Gut Creek and southwest of Route 702 in the Essex area of Baltimore County. Access to the properties is via Route 702 to Hyde Park Road to Goodwood Avenue and then to Cedar Avenue. Lots 84 and 85 are waterfront lots located on the east side of Cedar Avenue; Lot 87 is located across the street on the west side of Cedar Avenue.

As shown on the site plans, Petitioner desires to develop these properties with the construction of a two-story dwelling on each lot. In order to do so, Petitioner is in need of variance relief from the front yard setback requirements set forth in Sections 1B02.3 and 303.1 of the B.C.Z.R. According to Petitioner's engineering consultant, Mr. Matz, the need for variance relief is driven by the significant environmental constraints that limit the location of proposed improvements on the properties. Specifically, Lot 87 is limited by the 100 foot buffer, tidal and non-tidal wetlands, and the 100 year tidal freeboard, and Lots 84 and 85 are limited by similar constraints on the other side of Cedar Avenue. Mr. Matz also indicated that the requested lot line adjustment was put before the County's Development Review Committee (DRC). In a letter dated September 12, 2008 that was marked and accepted into evidence as Petitioner's Exhibit 2, the DRC declined to grant the lot line adjustment at that time, and indicated rather that the proposed development should proceed as a minor subdivision.

Further evidence regarding the subject properties indicate that they were established a number of years ago. Like many subdivisions that were established along the waterfront areas of Essex/Middle River, Lots 84, 85, and 87 were platted as part of the "Goodwood Farms" subdivision in November 1929. A copy of the Plat was marked and accepted into evidence as Petitioner's Exhibit 3. Obviously, these lots -- like the other subdivisions in this area that were established 80 plus years ago -- were platted with very little, if any regard for the now recognized

environmental constraints inherent to these areas. Indeed, Lot 86 as shown on the site plans is a significant waterfront lot consisting of almost 2 acres and owned by Petitioner; yet because of the environmental constraints that are also shown on the site plans, it is virtually unbuildable by today's standards. As a result of the environmental constraints, Petitioner has sought to reposition the lot line between Lots 84 and 85. The current lot line (--- - - ---) runs straight between the two properties. The proposed new lot line (--- - - ---) would run diagonally inward to Lot 84, thus reducing the size of Lot 84 and increasing the size of Lot 85. As shown on the site plans, this would "pinch" Lot 84, necessitating a proposed dwelling to be located closer to the front yard. The proposed dwelling on Lot 85 would also be pushed closer to the road. According to Mr. Matz, the placement of both these dwellings is driven by the environmental constraints present on the properties, as is the placement of the proposed dwelling on Lot 87.

In support of the variance requests, Mr. Matz discussed a number of unusual characteristics of the properties that justify the relief. First, as the record plat accepted into evidence as Petitioner's Exhibit 3 demonstrates, the subject lots were established in 1929, substantially before the adoption of zoning regulations and certainly prior to the adoption of comprehensive regulations and restrictions concerning environmentally sensitive areas on the properties. Second, when these lots were established, there were no services or utilities that served the area, and hence a decreased possibility that these lots could be developed; however, recently, the County extended public water and sewer service access to this area thereby presenting the opportunity for the development as proposed on the site plans. Finally, in addition to the size and shape differences of the lots, the location of the properties in the Goodwood Farms subdivision is also distinctive compared with others in that area. The subject properties are located at the southernmost end of Cedar Avenue, terminating at a peninsula into Muddy Gut

Creek. On the other hand, the other properties in the subdivision are more significantly inland, or have water access on only one side. The location of these properties essentially goes hand-in-hand with the environmental constraints present on the properties, including wetlands, 100 foot buffers, and tidal freeboard. As a result of this location on the peninsula, there are very few choices of location for the proposed houses on the subject properties other than that shown on the site plans, and at the same time, there is very little chance for additional future development.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated August 25, 2008 which indicate that the Development Review Committee decided on August 25, 2008 that Lots 84 and 85 should be proposed as a minor subdivision although variances are needed. The property is at the end of the road. Increasing proximity to the road permits more distance from the flood zone and environmentally sensitive shore area. The Planning Office will defer to the Department of Environmental Protection and Resource Management (DEPRM) on location of the buildings due to the Critical Area. In addition, parking spaces should not be located in the public-right-of-way. Comments were received from the Bureau of Development Plans Review (DPR) dated August 27, 2008 which indicate that the first floor or basement must be at least one foot above the flood plain elevation in all construction, the building should be designed and adequately anchored to prevent flotation or collapse, and constructed of materials resistant to flood damage. Flood-resistant construction should be in accordance with the Baltimore County Building Code which adopts the International Building Code. For Lot 85, DPR indicates that if the variance is granted, a condition be imposed that the turnaround be posted as “no parking.”

Finally, comments were received from the Department of Environmental Protection and Resource Management dated August 27, 2008 which indicate that the properties must comply

with the Chesapeake Bay Critical Area Regulations. The properties are located within a Limited Development Area of the Chesapeake Bay Critical Area and must comply with a maximum lot coverage area and maximum forest clearing areas. In addition, a 100 foot tidal buffer covers a majority of the lots. The proposed development within the tidal buffer is the subject of Chesapeake Bay Critical Area Administrative Variances currently under review by DEPRM. Allowing the front setback reduction would help reduce impacts to the 100 foot tidal buffer and forest on the properties.

Considering all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structures which are the subject of the variance requests. These properties were platted well before the adoption of the zoning regulations and environmental restrictions. Because of their locations at the end of Cedar Avenue on the peninsula at Muddy Gut Creek, the properties are affected by environmental constraints more so than other properties in the Goodwood Farms subdivision. The variances are not driven by anything Petitioner has done, but rather are the product of the natural constraints and limitations on the properties themselves. Hence, I find the properties unique in a zoning sense, and also find that the imposition of zoning disproportionately impacts the subject properties as compared to other properties in the zoning district.

Finally, I find these variances can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. In my view, the addition of three dwellings to the neighborhood will have an immeasurable effect on the locale. In addition, with the availability of public water and sewer services to the subject properties, the proposed dwellings will result in “in-fill” development of a previously platted, but heretofore undeveloped and buildable area.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED, this 21st day of October, 2008 by this Deputy Zoning Commissioner, that variance relief for properties set forth as follows:

Case No. 2009-0032-A: For the property located at 827 Cedar Avenue (Lot 84), the variance request from Sections 1B02.3 and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a front setback of 10 feet in lieu of 22.5 feet required; and

Case No. 2009-0033-A: For the property located at 829 Cedar Avenue (Lot 85), the variance request from Sections 1B02.3 and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a front setback of 5 feet in lieu of 22.5 feet required; and

Case No. 2009-0034-A: For the property located at 830 Cedar Avenue (Lot 87), the variance request from Section 1B02.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) for a front setback of 10 feet in lieu of 25 feet required,

be and are hereby GRANTED, subject, however, to the following which are conditions precedent to the relief granted herein:

1. Petitioner may apply for his building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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 will be required to return, and be responsible for returning, said property to its original condition.
2. The base flood elevation for these sites is 10.2 feet Baltimore County Datum. The flood protection elevation for these sites is 11.2 feet. In conformance with Federal Flood Insurance Requirements, the first floor or basement floor of each dwelling must be at least 1 foot above the flood plain elevation in all construction.
3. The properties to be developed are located adjacent to tidewater. The developer is advised that the proper sections of the Baltimore County Building Code must be followed

4. The building engineer shall require a permit for these projects. The buildings shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structures 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.
5. For Case No. 2009-0033-A, the turnaround for Lot 85 shall be posted as “no parking.”
6. Development of these properties must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).
7. The properties are located within a Limited Development Area of the Chesapeake Bay Critical Area and must comply with a maximum lot coverage area and maximum forest clearing areas.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz