

IN RE: PETITION FOR VARIANCE
SW corner of Belle Avenue and
Washington Blvd.
13th Election District
1st Councilmanic District
(1920 Belle Avenue)

Earl Nolan Hurley
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FORBALTIMORE COUNTY
* **CASE NO. 2009-0047-A**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of an Amended Petition for Variance filed by the legal owner of the subject property, Earl Nolan Hurley. Petitioner is requesting variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- To allow a lot area of 15,744 square feet in lieu of the required 20,000 feet; and
- To allow a front yard setback of 30 feet in lieu of the required 40 feet; and
- To allow a side yard setback of 12.4 feet in lieu of the required 40 feet.

The subject property and requested relief are more fully depicted on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests was Petitioner Earl Nolan Hurley, and Rick Richardson with Richardson Engineering LLC, the professional engineer who prepared the site plan. Also appearing in support of the requested relief was Petitioner’s builder, Michael Homa, with Pascal-Turner, Ltd. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is an irregular-shaped property consisting of approximately 15,744 square feet or 0.361 acre, more or less, zoned

D.R.2. The property is located at the southwest corner of Old Washington Boulevard and Belle Avenue, just south of Washington Boulevard and west of the Baltimore Beltway in the Halethorpe area of Baltimore County. The majority of the property (176.5 feet) fronts Belle Avenue, with a smaller portion (115.14 feet) fronting Old Washington Boulevard. In addition, the property is currently unimproved, in terms of a dwelling, though there is an existing shed located in the rear yard that straddles the subject property and the adjacent property to the west that is owned by Petitioner's sister. The subject property also has the remains of a 992 square foot foundation that Petitioner plans to remove, and has access to public water and sewer services.

The subject property has been in Petitioner's family since it was originally platted. Petitioner has owned the property outright since 1989, as shown on the Deed transferring ownership from Petitioner's father to Petitioner, which was marked and accepted into evidence as Petitioner's Exhibit 2. As also shown on the record plat that was marked and accepted into evidence as Petitioner's Exhibit 3, the lots making up the subject property -- Lots 1 and 2 -- were created in 1911. As Mr. Richardson, Petitioner's engineer also pointed out, most of the lots created in this subdivision known as "Oak Park" have less than the currently required 20,000 square feet in area. This is also shown on the aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 4.

Once the existing foundation is removed from the property, Petitioner plans to build a one-story raised rancher style dwelling with an attached two car garage. The dwelling would consist of approximately 1,800 square feet and the garage approximately 744 square feet. As shown on the site plan, the dwelling would face Belle Avenue, which is consistent with the longer property frontage along Belle Avenue. Access to the property would be via a 12 foot

wide driveway situated on the left side of the property to the two car garage. In order to build the proposed dwelling, Petitioner is in need of variance relief from the minimum lot area requirement of 20,000 square feet, the front yard setback requirement along Belle Avenue of 40 feet, and the side yard setback requirement along Old Washington Boulevard of 40 feet.

In support of the variance requests, Mr. Richardson pointed to the irregular size and shape of the property. Most of the nearby properties are rectangular in shape and have fairly standard 50 foot widths. In contrast, the subject property is approximately 176 feet wide and is situated at the corner of two intersecting streets. In addition, Mr. Richardson explained that one of the primary factors driving the need for the variances is the topography of the subject property, which slopes toward Old Washington Boulevard. The contours of the property are shown on the site plan with a contours overlay that was marked and accepted into evidence as Petitioner's Exhibit 6. Also, the subject property has a somewhat unique property line along Old Washington Boulevard. As shown in the redlined area of Petitioner's Exhibit 6, unlike the other nearby properties adjacent to Old Washington Boulevard with property lines closer to the road, Petitioner's property line juts inward from Old Washington Boulevard more so than these other properties, thereby creating a greater need for setback relief than the others. Photographs of the subject property and the frontage along Belle Avenue and Old Washington Boulevard, which were marked and accepted into evidence as Petitioner's Exhibits 7A through 7D, also show the slopes of the property.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

Considering of all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. In particular, the property has both an irregular size and shape when compared to others in the immediate area. The buildable areas of the property area also limited by the contours and slopes of the property. I also find that the unusual property line along Old Washington Boulevard, as compared with other properties along the road, creates more of a setback requirement than might otherwise exist. Moreover, the subject property was platted in its present size and shape in 1911, far predating the adoption of the current Zoning Regulations. Hence, the imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district.

Finally, I find these variance requests 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. As depicted on the site plan, Petitioner plans to build a reasonably sized home that is well centered on the lot. It appears the home will fit in nicely with the character and aesthetics of the other homes in the neighborhood, which is not always an easy thing to do when comparing homes built in the 1940's with planned newer homes. Fortunately, the homes adjacent to Petitioner's lot were built in the 1970's and 80's, which will soften the appearance and comparisons associated with a newer home. It is also noteworthy that there were no neighbors or other interested citizens present in opposition to the requested relief.

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

THEREFORE, IT IS ORDERED this 1st day of December, 2008 by this Deputy Zoning Commissioner, that Petitioner's variance relief requests from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

- To allow a lot area of 15,744 square feet in lieu of the required 20,000 feet; and
- To allow a front yard setback of 30 feet in lieu of the required 40 feet; and
- To allow a side yard setback of 12.4 feet in lieu of the required 40 feet,

be and are hereby GRANTED. The relief granted herein shall be subject to the following:

1. Petitioner may apply for his building permit 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 would 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
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz