

**I am IN RE: PETITION FOR VARIANCE**

NE side of Virginia Ave, 656 feet NW  
of c/l of Belair Road  
13<sup>th</sup> Election District  
1<sup>st</sup> Councilmanic District  
**(24 Virginia Avenue)**

McCloskey Group, LLC  
*Petitioner*

\* BEFORE THE  
\* DEPUTY ZONING  
\* COMMISSIONER  
\* FOR BALTIMORE COUNTY  
\* **Case No. 2009-0067-A**

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, McCloskey Group, LLC, by Brian M. McCloskey, Authorized Member. Variance relief is requested from Section 1B02.3.B [March 20, 1955 regulations] of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling with a 15 foot side yard setback to a paper street and a 40 foot setback to the centerline of a paper street in lieu of the required 25 feet and 50 feet, respectively.<sup>1</sup> The subject property and requested relief are more fully described 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 request were Petitioner Brian M. McCloskey on behalf of McCloskey Group, LLC, and Deborah Dopkin, Esquire, attorney for Petitioner. Also appearing in support of the requested relief was G. Dwight Little with Little & Associates, 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 subject property is a rectangular-shaped property consisting of approximately 9,770 square feet or 0.224 acre, more or less, zoned

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<sup>1</sup> Petitioner, in its original petition, requested a 40 foot setback to the centerline of a paper street in lieu of the required 50 feet, but requested to amend this requested relief when it was realized during the hearing that the paper street right-of-way referred to in the petition -- Clearview Avenue -- is actually 30 feet wide, and not the 50 foot width upon which the original request was based. There being no opposition, the amendment was permitted.

D.R.5.5. The property is situated at the terminus of Virginia Avenue located on the northwest side of Belair Road, north of Taylor Avenue, in the Overlea area of Baltimore County. The subject property is one of two lots that were created by a minor subdivision of the “Goble Property.” The minor subdivision was approved in March 2008, as shown on the Minor Subdivision Plan that was marked and accepted into evidence as Petitioner’s Exhibit 2. The subject property is shown on the plan as Lot 1.

Currently, the adjacent lot to the subject property, Lot 2, has a home that is under construction and Petitioner’s plan is to also develop Lot 1 with construction of a single-family dwelling; however, as shown on the site plan, in order to build a home on the subject property, Petitioner is in need of variance relief from the side yard setback requirements by virtue of Section 1B02.3.B of the B.C.Z.R. This section states generally that for existing developments, the minimum standards for net area, lot width, front yard depth, single-side-yard width, sum of widths of both side yards, rear yard depth and height shall be as prescribed by the zoning regulations applicable to such use at the time the plan was approved by the Planning Board or Commission. In the instant matter, the March 20, 1955 regulations are applicable and require a 25 foot side yard setback to paper street and 50 foot setback to the centerline of a paper street for the property. Petitioner is requesting a variance to permit a 15 foot side yard setback to a paper street and a 30 foot setback to the centerline of a paper street.

In support of the variance requests, Mr. Little, Petitioner’s engineer, explained that what drives the need for the requested relief is the subject property’s proximity to the paper street known as Clearview Avenue, which although not shown on most vicinity maps, is depicted on the site plan as bordering the north side of the subject property. Mr. Little noted that this paper street has never been developed and is now a heavily wooded area, as shown on the aerial photograph that was marked and accepted into evidence as Petitioner’s Exhibit 3. Another

unusual characteristic of the property is that it is situated fairly high in terms of elevation, in relation to others in the neighborhood. It also has existing vegetation surrounding the property that would be kept and would act as a natural buffer from other existing properties. In terms of the lot itself, Petitioner proposes a home similar to the one being constructed on Lot 2 (approximately 2,000 square foot, two-story colonial with two car garage), with comparable size and materials, and similar in character to other homes that have been built over the last 10 to 15 years on the last remaining lots on Virginia Avenue, with appealing finishes and color scheme. Photographs depicting the subject property, as well as Lot 2 and the other properties in the neighborhood, were marked and accepted into evidence collectively as Petitioner's Exhibit 4. The subject property would have access to public water and sewer service, and access to the site would be via a use-in-common driveway at the terminus of Virginia Avenue, as illustrated on the site plan.

Mr. Little also described the practical difficulty and undue hardship associated with the variance requests, stating that strict interpretation of the zoning regulations would not allow a properly sized home on this buildable lot. Instead, the home would have to be much narrower, and would not be in keeping with the size and character of the other homes in the neighborhood. In addition, strict interpretation would not permit the desirable in-fill development of the property, with access to essential services, including public water and sewer and geographic proximity to main arterial roads and commercial areas. Mr. Little also noted that the variance requests would not increase density beyond that which is permitted in the Zone by the B.C.Z.R. He also indicated that based on his professional experience, it is foreseeable that Clearview Avenue as a paper street will never be developed, and it is not part of any potential improvements being contemplated by the Baltimore County Department of Public Works; hence

there would be virtually no impact, and certainly no negative or detrimental impacts, to the health, safety, or general welfare of the locale.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comment dated October 27, 2008 from the Office of Planning indicates that the minor subdivision of the Goble Property (06108 M) was approved in March 2008 for two single-family lots. The Office of Planning has no objection to the requested variance, as the public right-of-way (Clearview Avenue) is an unimproved paper street.

Considering all the testimony and evidence presented, I am persuaded to grant the variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. In short, the subject property is unique because it is the only one in the neighborhood that abuts a paper street and has the setback limitations associated with its placement at this location. As such, it creates artificial constraints from a zoning perspective that affect this property singularly unlike others in the immediate area. Therefore, I find that the imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district.

I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. As indicated by Mr. Little, strict interpretation of the zoning regulations would not allow a properly sized home on this buildable lot, and would not permit the desirable in-fill development contemplated here. Finally, I find that this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a 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 held, and after considering the testimony and evidence offered, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 28<sup>th</sup> day of November, 2008 by this Deputy Zoning Commissioner, that Petitioner's Variance requests from Section 1B02.3.B [March 20, 1955 regulations] of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling with a 15 foot side yard setback to a paper street and a 30 foot setback to the centerline of a paper street in lieu of the required 25 feet and 50 feet, respectively, be and are hereby GRANTED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner is advised that it may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its 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