

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E/S Sherwood Road, 210' SE of c/line of		
Old Washington Road	*	ZONING COMMISSIONER
(1905 Sherwood Road)		
	*	FOR
13 th Election District		
1 st Council District	*	BALTIMORE COUNTY
Joan Koehlerschmidt, <i>Legal Owner</i>	*	Case No. 2009-0077-A
Sherwood Road Properties, LLC,		
<i>Contract Purchaser</i>	*	
Petitioners		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Zoning Commissioner for consideration of a Petition for Variance filed by Joan Koehlerschmidt, the property owner, and F. Michael Grace, Managing Member, of Sherwood Road Properties, LLC, the Contract Purchaser. Petitioners request variance relief from Baltimore County Zoning Regulations (B.C.Z.R.) Section 102.4 to permit a lot less than 20,000 square feet with frontage on a right-of-way less than 30 feet wide. The subject property and requested relief are more particularly described on the site plan, which was submitted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Joan Koehlerschmidt; Jennifer R. Busse, Esquire, with Whiteford, Taylor & Preston, the attorney for Sherwood Road Properties, LLC; and Salvatore C. Crupi, a Professional Engineer with Matis Warfield, the consulting firm that prepared the site plan. There were no Protestants in attendance at the hearing, and there were no adverse Zoning Advisory Committee (ZAC) comments received.

The hearing proceeded informally by way of a proffer from Ms. Busse and Mr. Crupi. Testimony and evidence revealed that the Petitioners have requested a limited exemption from

the Development Review Committee (DRC) per Baltimore County Code Section 32-4-106(a)(1)(viii) to allow a lot line adjustment between the subject property and the improved parcel adjacent and to the north so as to permit the construction of one single family home on the property (DRC No. 020507B). Before granting development approval, the Zoning Review Office requested that the instant relief be obtained. The Petitioner agreed to this request and Petitioners' Exhibit 1 reflects this situation. Should this relief be granted, and prior to obtaining any permits, Petitioners are required to return to the DRC in order to demonstrate that this zoning relief was obtained. The subject property will actually be provided with its own address at the time of permit application. Until then, it is being referred to as 1905 Sherwood Road since it is owned by Ms. Koehlerschmidt who also owns the property adjacent and to the south (1905 Sherwood Road). This subject property, however, is its own stand-alone lot of record with its own tax identification information, as noted on Petitioners' Exhibit 1.

Testimony and evidence further disclosed that the subject property is an irregular shaped parcel, zoned D.R.5.5, located in the Lansdowne area of southwestern Baltimore County and is currently vacant. As explained by Ms. Busse, the property currently contains 0.214 acres, more or less, (9,335 square feet) and will contain 0.249 of an acre (10,846 square feet) after the lot line adjustment is approved. The property is bounded by residential development to the south and west, and a cemetery to the east. To the north of the property are two parcels; one containing a single-family dwelling and the other lot is currently vacant.

Turning to the request for variance from B.C.Z.R. Section 102.4 to permit a dwelling on a lot containing less than 20,000 square feet abutting a right of way of less than 30 feet wide, I note that the property's unique characteristics drive the need for variance relief. Specifically, Sherwood Road is a public road less than 30 feet wide along its entire length and yet is already

serving five existing dwellings without complaints being raised by the County or any of the residents. The entire area is already developed with single-family homes with the exception of this parcel and one adjacent and to the north. With the exception of the dwelling to the north, there are no parcels in the immediate area that exceed 20,000 square feet and thus this proposed parcel fits nicely within the scope of those around it.

Sherwood Properties is proceeding through the development process and this zoning review proceeding to permit a dwelling on the property. The instant variance relief is not a lot size variance request. The applicable bulk regulations contained in Section 1B02.3C.1 of the B.C.Z.R. requires the lot contain 6,000 square feet and as demonstrated on Petitioners' Exhibit 1, the property will contain in excess of 6,000 square feet. Additionally, the property is large enough so that a new home can be constructed without the need for any setback variances.

Clearly, variance relief is warranted from this regulation as strict compliance would render the lot unbuildable resulting in a practical difficulty upon the Petitioners. Again, Sherwood Road is less than 30 feet wide along its entire length. Asking the Petitioners to obtain additional right-of-way in order to widen Sherwood Road (which I note has not been requested by the Department of Public Works or anyone else including any other reviewing agency) would burden the other property owners who own frontage along Sherwood Road. Furthermore, it is unnecessary to widen Sherwood Road.

Similarly, forcing the Petitioners to create a lot of greater than 20,000 square feet in order to avoid the requirement that the lot front on a right-of-way of at least 30 feet would be impractical and present a severe practical hardship as the entire property will encompass just less than 11,000 square feet but as noted will not be out of character with those around it. Finally, I

find it persuasive that none of the surrounding residents have noted any objection to the request and/or the granting of the requested variance relief.

Considering the uncontroverted testimony and evidence presented at the hearing, I find that the subject Property has characteristics which are unique, thereby meeting the first prong of the test set forth in *Cromwell v. Ward*, 107 Md. App. 691 (1995) and contained in Section 307.1 of the B.C.Z.R. I find, therefore, that the existing conditions create a unique situation that generates a practical difficulty in meeting this specific zoning requirement. I further find consistent with the test articulated in *McLean v. Soley*, 270 Md. 208 (1973), compliance with the strict letter of the restrictions would unreasonably prevent the owner from using the property for a permitted purpose, the grant of the variance will do substantial justice to the applicants as well as to others in the area, and the relief sought is within the spirit of the ordinance and will not be injurious to the public safety and welfare. *Id.* at 214-215.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioners' variance request should be granted.

Finally, at least two prior cases requesting relief from B.C.Z.R. Section 102.4 were filed as Petitions for Special Hearing (*See* Case Nos. 07-573-SPH and 06-327-SPH). In this particular matter, the Zoning Review Office instructed the applicants to file the relief as a Petition for Variance. Noting that the Petitioners in this matter have met the burden for variance relief, however, I see no need to modify the Petition as filed and advertised as a variance case.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 12th day of December, 2008, that the Petition for Variance seeking relief from Section 102.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a dwelling lot containing less

than 20,000 square feet with frontage on a right-of-way of less than 30 feet wide over which the public has a right to travel, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following:

1. ADVISORY: The Petitioners shall be required to return to the Development Review Committee (DRC) to obtain approval for their limited exemption under B.C.C. Section 32-4-106(a)(1)(viii) concerning the lot line adjustment.
2. The Contract Purchaser is advised that it may apply for any required building permits and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of 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
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County