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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE |
| NW/S Traceys Store Road, 600' NE of | | |
| Foreston Road | * | ZONING COMMISSIONER |
| (Traceys Store Road) | | |
| 5 th Election District | * | OF |
| 3 rd Council District | | |
| | * | BALTIMORE COUNTY |
| Allen Estep, et ux | | |
| Petitioners | * | Case No. 2009-0085-A |

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Allen Estep, and his wife, Valerie B. Estep. Petitioners request variance relief from Section 1A09.7B.5.b.1(a) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback (north side) of 100 feet for a proposed dwelling, in lieu of the required 300 foot setback as determined by the Director of the Department of Environmental Protection and Resource Management (DEPRM), from an adjacent property that has received preferential agricultural assessments in the prior five (5) years. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Allen and Valerie Estep, property owners, and Bruce E. Doak, a consultant with Gerhold, Cross & Etzel, Ltd., the property line surveyors who prepared the site plan for this property. Wally Lippincott, Jr., Land Preservation Manager with DEPRM, also appeared and participated via telephone conference during the hearing and provided direction on the proper location of a proposed landscape planting area to screen the future house and front yard area. There were no Protestants or other interested persons present, however, it is noted that eleven (11) letters of support were received from adjacent neighbors namely, Irene L. Altenburg, W. Ralph Wisner, Jr., Alvin H. and Marie E. Garrett, Joe Armacost, Ada M. Wilhelm, Donald E. Armacost, Jr., Anthony J.

Valis, Ronald Wilhelm, Allen Turnbaugh, Marcia L. Alexander and Dennis L. Wilhelm. Their letters were received as Petitioners' Exhibit 3.

The subject property under consideration is a narrow, irregular rectangularly shaped parcel, environmentally constrained due to a stream and a forty (40) foot grade drop in topography (front to rear) located in northern Baltimore County on the west side of Traceys Store Road, just north of Foreston Road in Parkton. The property is a lot of record and contains a gross area of 4.6182 acres, more or less, zoned R.C.8 and is presently vacant and unimproved. Prior to County Council Bill No. 76-04 passed in August 2004, the property known as Parcel No. 219 on Maryland Tax Map 15, was zoned R.C.4. The Petitioners have owned and maintained the property since 1986, well prior to the current R.C.8 regulations, and have always intended to build a new single-family dwelling at some future time. Mr. Estep testified that except for the relief from the 300-foot setback from adjacent agriculturally assessed property, the lot meets all other requirements of the R.C.8 zoning classification. The lot has 335 feet of frontage on Traceys Store Road and is over 792 feet deep.

As set forth above, the need for variance relief arises by virtue of the adjacent lands (to the northeast owned by Irene L. Altenburg¹) as her property is suitable for agricultural production and entitled to agricultural or conservation easements. The regulations require, under these circumstances, that the proposed dwelling be constructed at least 300 feet from the adjacent property line(s). As illustrated on the site plan, the need for a 300-foot setback on a parcel 335 feet wide, which has been a lot of record created long ago (prior to 1970) would preclude the Petitioners from any use of this property. There was no dispute that the property is subject to the R.C.8 environmental enhanced provisions of the B.C.Z.R. Section 1A09.7B.3 requires that for residential development, the maximum area of the building envelope not exceed 20,000 square feet in size. The building envelope as shown meets the size requirements of the R.C.8 zone and the new home will be accessed from Traceys Store Road.

¹ Ms. Altenburg supports Petitioners' variance request as evidenced by her letter accepted as Petitioners' Exhibit 3.

In its initial Zoning Advisory Committee (ZAC) comment, DEPRM realized that a 300-foot setback was not possible, however, recommended that a 35-foot wide planted buffer be provided along the 530-foot northern boundary. Messrs. Estep and Doak demonstrated to the satisfaction of Wally Lippincott that to provide a buffer of this magnitude between the uses, while possible, would require an extensive cost, be extremely difficult, and provide little in the way of environmental enhancements. Given the topographical grades, the proposed home location, which is in a relatively flat area, Mr. Lippincott revised his ZAC comment as illustrated on Petitioners' Exhibit 4 to a reduced 140' x 25' planting area to screen the house and front yard.

Based upon the testimony and evidence presented, I am persuaded that relief should be granted and that the Petitioners have met the requirements set forth in Section 307 of the B.C.Z.R. The amendments to the plan appear appropriate and resolve the issues raised by DEPRM and the Office of Planning. The plan shows the adjacent agricultural use property owned by Irene L. Altenburg. The proposed area of landscape planting appears to be sufficient screening along that property line which will buffer the new house from the Altenburg parcel. Additionally, a note that any occupant of the new dwelling might be subject to an inconvenience of discomfort arising from the adjacent agricultural operations as found in B.C.Z.R. Section 1A09.8 will be added to the site plan and this Order. It is clear that relief can be granted and that there will be no detrimental impacts to adjacent properties or the health, safety or general welfare of the surrounding locale. It is clear that there will not be any increase in residential density, beyond that otherwise allowable by the B.C.Z.R., and that the relief requested is the minimum necessary to afford relief to the Petitioners, without impact or affect upon adjoining owners.

Pursuant to the advertising, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted. The existing and proposed use is expressly permitted as of right in the R.C.8 zone and the Petitioners would suffer real practical difficulty if the requested relief were not granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 2nd day of December 2008, that the Petition for Variance seeking relief from Section 1A09.7B.5.b.1(a) of the Baltimore County Zoning Regulations (B.C.Z.R.) to reduce the 300 foot setback for a proposed dwelling from an adjacent property receiving preferential agricultural assessments to as close as one hundred (100) feet on the northeast side, in accordance with Petitioners' Exhibit 1, be and the same is hereby GRANTED; subject to the following restrictions:

1. Prior to the issuance of any building permits, the development and use of the subject property shall comply with all environmental and forest buffer regulations as set forth in the ZAC comment submitted by DEPRM, dated November 6, 2008.
2. The proposed dwelling may be subject to inconveniences or discomforts arising from agricultural operations including but not limited to: noise, odors, fumes, dust, the operations of machinery of any kind during any 24-hour period (including aircraft), the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers. The County shall not consider an agricultural operation to be a public or private nuisance, if the operation complies with these regulations and all federal, state, or county health or environmental requirements.
3. Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
4. When applying for a building permit, the site plan filed must reference this case and set forth and address the conditions and restrictions of this Order.

Any appeal of this decision shall be entered within thirty (30) days of the date hereof.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County