

IN RE: PETITION FOR ADMIN. VARIANCE	*	BEFORE THE
W side Candlestick Drive, NW corner of		
Candlestick Drive and Highview Drive	*	DEPUTY ZONING
8 th Election District		
2 nd Councilmanic District	*	COMMISSIONER
(2 Candlestick Drive)		
	*	FOR BALTIMORE COUNTY
Norman and Jann Seff		
<i>Petitioners</i>	*	Case No. 2009-0088-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Administrative Variance filed by Norman and Jann Seff, the legal property owners, for property located at 2 Candlestick Drive. The variance request is from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a rear yard setback of 34 feet in lieu of the required 50 feet. The subject property and requested relief are more particularly described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

This matter was originally filed as an Administrative Variance, with a closing date of October 20, 2008. On October 10, 2008, an adjacent property owner, Ms. Barbara Smelkinson of 1412 Highview Drive, filed a Formal Demand for Hearing. The hearing was subsequently scheduled for Friday, November 14, 2008 at 10:00 AM in Room 104 of the Jefferson Building, 105 West Chesapeake Avenue, Towson, Maryland. Prior to the hearing date, the hearing was moved to Room 1 located on the second floor of the Jefferson Building. In addition, a sign was posted at the property on October 29, 2008 and an advertisement was published in *The Jeffersonian* newspaper, giving neighbors and interested citizens notice of the hearing.

Appearing at the public hearing in support of the requested relief were Petitioners Norman and Jann Seff. Also appearing in support of the requested relief was Diane Torn, Petitioners’ architect. Appearing as Protestant was Ms. Barbara Smelkinson, who expressed

opposition to the requested relief and filed the demand for hearing. Ms. Smelkinson was represented at the hearing by Diana Denrich, Esquire, and Wayne M. Willoughby, Esquire. There were no other interested citizens in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is a square-shaped property consisting of approximately 1.69 acres, zoned R.C.5. The property is located at the northeast corner of Candlestick Drive and Highview Drive, south of Broadway Road and just east of Greenspring Avenue in the Greenspring Valley area of Baltimore County. The property is improved with Petitioners' existing single-family dwelling. The property is also served by private water and septic service.

Petitioners acquired the property in 2001 after searching for quite some time for what they characterized as their long term home. Mr. Seff indicated that he and his wife own a design/build construction company and that he is a professional carpenter/cabinet maker. Together, they searched for a home in an area where they could put their own "stamp" on the property, whereby they could invest the construction skills and experience they had put forth in improving other peoples' homes, and now incorporate those attributes into the improvement of their own home. Mr. Seff also indicated that the home, which was built in 1960, was outdated when they purchased it and needed to be renovated and updated. He further stated that the home is fairly small compared with some others in the area, and that it presented a number of positive opportunities for expansion that would make the home a more modern show place. As depicted in the photograph that was marked and accepted into evidence as Petitioners' Exhibit 2A, some of that work has already been completed. This photograph shows an attractive side entrance to the home where it faces Highview Drive. As also depicted in the photographs that were marked and accepted into evidence as Petitioners' Exhibits 2B through 2D, additional work is planned

for the rear and side yard areas of the property that face north. It is this area that is the subject of Petitioners' variance request.

As shown on the floor plan that was marked and accepted into evidence as Petitioners' Exhibit 3, Petitioners have rather grand plans for the property, and the home in particular. They plan to construct a garage that would be located at an angle to the right of the dwelling. They also plan to make improvements that would ultimately result in the home resembling a "U" shape, with something of patio/courtyard in the middle. As part of the improvements, and in connection with the instant variance request, Petitioners desire to change the interior configuration of the bedroom areas of the home, including the location of hallways, bedrooms, and bathrooms. In addition, Petitioners desire to enlarge their master bedroom to more of a "master suite," with a larger bedroom area, sitting room, walk-in closet, and large master bathroom. This enlargement of the master bedroom and the master bathroom is what necessitates the variance relief. As shown by the blue dotted line labeled "Existing 50' Setback" on Petitioners' Exhibit 3 floor plan, the planned master bathroom and a small part of the master bedroom area encroaches into the 50 foot setback -- up to 16 feet into the setback where the master bathroom is located.

Petitioners indicated there are several factors that necessitate the variance relief. First, although Petitioners are reconfiguring the bedroom and bathroom areas in the home, the bedroom area of the home as a whole is staying the same to a great degree. As Mr. Seff indicated, the "bedroom wing is where it is" and they "can't get around that." In order to make the improvements they believe are warranted, especially to the master bedroom area, it is necessary to add on to the master bedroom as shown on the site plan. Petitioners also indicated that the location of the existing septic system limits their options, in terms of simply building a master bedroom addition on the side yard only of the home, rather than both the side and rear

yards. Their current design goes as close to the septic system -- which is located in the side yard -- as is permissible. Petitioners also indicated that Mr. Seff's health is an issue. He suffers from a bad back and foresees the possibility of a wheelchair in his future. The addition to the master bedroom in its planned location will limit how far he needs to walk down his hallway to get to the bedroom, and will also allow for sufficient space for the rooms and doorways to be wheelchair accessible.

Finally, Petitioners submitted letters of support from neighbors Linda DuVall and Phil Wagner of 1411 Highview Drive dated July 26, 2007 and Marvin and Erma Yaker of 4 Candlestick Drive dated October 5, 2007. These letters were marked and accepted into evidence as Petitioners' Exhibits 5A and 5B, respectively. Ms. DuVall and Mr. Wagner indicated they live directly across the street and would be in direct view of Petitioners' proposed addition, and have no objection to the granting of the variance. Mr. and Mrs. Yaker indicated in their letter that they live on the north side of Petitioners' home and have an obscured view of the proposed addition through the dense foliage. They expressed support of Petitioners' variance request.

Also testifying in support of the requested relief was Petitioners' architect, Ms. Torn. Ms. Torn indicated that she is very familiar with Petitioners' property and their plans to update and renovate the home. She then submitted a "Progress Drawing" showing the proposed residence for the Seff family. This drawing, showing a floor plan and front, side, and rear elevations, was marked and accepted into evidence as Petitioners' Exhibit 4. In reviewing the drawing and the planned location of Petitioners' master bedroom suite, and considering Petitioners' variance request, Ms. Torn indicated that, architecturally speaking, the layout as shown on Petitioners' Exhibit 4 -- including the master bedroom layout -- is the most architecturally feasible configuration. On the one hand, it makes it so the planned courtyard in between the "U" shape will not be so long, and on the other hand, the distance to the master

bedroom will likewise not be of such a great distance. In short, Petitioners' plans show a desirable balance in the layout.

Testifying in opposition to the requested relief was Ms. Smelkinson, who resides at 1412 Highview Drive. As depicted on the site plan, Ms. Smelkinson's home is situated on Highview Drive just northwest of the corner of Highview Drive and Candlestick Drive where Petitioners' home is located. In addition, Ms. Smelkinson's home faces Highview Drive and sits at an approximately 45 degree angle from Petitioners' home. The side and rear of Ms. Smelkinson's home has a view of the rear of Petitioners' home. Ms. Smelkinson indicated that she has lived in her home for the past 45 years. Property tax records reveal that her property consists of approximately 1.75 acres and that her home was built in 1964.

Ms. Smelkinson indicated that one of the primary reasons she and her husband moved into the neighborhood so many years ago was the spacious lots and the privacy afforded by a wooded area. She believes that Petitioners' expansion plans, and encroachment into the 50 foot setback toward her direction, may accentuate the view from her home to the back of Petitioners' home. During Ms. Smelkinson's testimony, her attorney, Mr. Willoughby, submitted a number of photographs that were marked and accepted into evidence as Protestant's Exhibits 1A through 1G. These photographs show the view from several vantage points of Ms. Smelkinson's home toward the rear of Petitioners' home. Ms. Smelkinson then indicated that the construction work presently ongoing appears substantial,¹ and that Petitioners' planned master bedroom addition will appear even larger from her home. She also indicated that, as shown in the photographs, the foliage between her property and Petitioners' property is not thick enough to screen her view, especially during the fall and winter months from October to May. Finally, Mr. Willoughby

¹ Not all of Petitioners' improvements have necessitated zoning relief. Presently, Petitioners are constructing an addition to the rear of the home that will enlarge the hallway area and a bathroom. This addition does not encroach into the 50 foot setback and therefore did not require zoning relief.

submitted an Affidavit dated November 13, 2008 from the aforementioned Mr. Wagner that was marked and accepted into evidence as Protestant's Exhibit 2. He indicated that since they became aware of Ms. Smelkinson's opposition to the variance request, they do not object to the variance inasmuch as it does not affect them personally, but on the other hand do not support granting the variance given the fact that an affected neighbor does object to the incursion into the rear yard setback along her property line.

At the conclusion of the testimony, Petitioners inquired as to whether sufficient landscape buffering and screening could allay Ms. Smelkinson's concerns regarding her potential view of Petitioner's addition to the rear of the home. During a break in the proceedings, the parties discussed the situation with one another. When the hearing resumed, Ms. Smelkinson agreed that she would not in all likelihood be opposed to the variance relief if there was sufficient landscaping in place to shield her view of the rear of Petitioner's home, especially since that issue was at the crux of her opposition in the first place. After inquiries made by the undersigned to both parties, it was agreed that the record of this case would be kept open for a short period of time in order to give Petitioners the opportunity to engage at their cost and expense a licensed and reputable landscape contracting firm to create a landscape plan that would be acceptable to both Ms. Smelkinson and Petitioners. On December 10, 2008, Petitioner Mr. Seff delivered a landscape plan prepared by Outside Unlimited, Inc. with offices in Hampstead, MD and Ijamsville, MD (near Frederick, MD). The plan was presented to Ms. Smelkinson and signed off for approval by both parties. The plan was marked and accepted into evidence as Petitioners' Exhibit 6. It shows the location of various plantings for the rear yard of Petitioners' home, and the type of plants specified.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental

Protection and Resource Management dated November 6, 2008 which indicate that prior to building permit approval, an inspection of the septic system may be required.

Considering 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 request. In particular, the configuration of the lot facing both Candlestick Drive and Highview Drive is unusual compared with other nearby lots. In addition, based on photographs accepted into evidence, it is clear that the home is placed much further back on the lot than was probably necessary when the home was built almost 50 years ago. The placement of the home in this manner creates limitations on improvements that can be made to the rear of the home. Finally, the placement of the septic system in the side yard -- the same area where the new master bedroom and bathroom addition is to be located -- also limits Petitioners' options with regard to improvements to the property. Therefore I find the property unique in a zoning sense.

I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. If not granted variance relief, Petitioners could not follow through with the updates and renovations they have planned, which appear to be much needed and which will be aesthetically pleasing and add value to the subject home -- as well as other homes in the neighborhood -- without overcrowding the land or being out of character with other nearby homes.

Finally, I find this variance 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.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 11th day of December, 2008, that an Administrative Variance from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a rear setback of 34 feet in lieu of the required 50 feet be and is hereby GRANTED, subject to the following:

1. Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Prior to building permit approval, Petitioners shall contact DEPRM for a determination of whether an inspection of the septic system is required.
3. In order to provide a buffer to neighbors -- and in particular Ms. Barbara Smelkinson at 1412 Highview Drive -- from view of the rear of Petitioners' home, and prior to commencing construction, Petitioners shall plant the landscape screening according to the landscape plan prepared by Outside Unlimited, Inc. and accepted into evidence as Petitioners' Exhibit 6. The plan shall be attached to this Order and incorporated herein.

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