

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NE side of Bradshaw Road, NE of Dowell Lane and Pfeffers Road	*	DEPUTY ZONING
11 th Election District	*	COMMISSIONER
3 rd Councilmanic District	*	FORBALTIMORE COUNTY
(8038 Bradshaw Road)	*	
Ronald Cassett and Ronald Cassett Jr.	*	CASE NO. 2009-0098-A
<i>Petitioners</i>	*	

* * * * *

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 owners of the subject property, Ronald Cassett and Ronald Cassett Jr. Petitioners are requesting variance relief from Section 301.1.A of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed open projection (porch) to have a side yard setback of 25 feet in lieu of the required 37½ feet. The subject property and requested relief are more fully depicted on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Petitioner Ronald Cassett Jr., and Bruce Doak with Gerhold Cross & Etzel, Ltd., the property line surveyor who prepared the site plan. There were no Protestants or other interested citizens in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is a long, narrow property, rectangular in shape, consisting of approximately one acre, more or less, zoned R.C.5. The property is located on the northeast side of Bradshaw road, opposite the intersection of Dowell Lane and Pfeffers Road, and northwest of Interstate 95 in the Kingsville area of Baltimore County. The property is improved with a two-story single-family frame dwelling and

a one-story wood frame garage located further to the rear of the property. A view of an aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 2 shows a rural-residential layout to the area, consistent with the property's R.C.5 Zoning classification. In addition, just to the northwest of the subject property is St. Stephens Church.

Further evidence revealed that Petitioner's family has owned the subject property and lived in the single-family for at least three generations. Mr. Doak indicated the dwelling is very old, dating back to the late 1800's. Petitioner, Mr. Cassett, Jr., indicated that his grandparents once owned and occupied the dwelling and his mother and father also lived there at a time when they took care of the grandparents. Petitioner's parents eventually acquired the property and Petitioner now finds himself in a similar situation, wherein he is now living in the dwelling and providing care for his father. However, due to the age of the dwelling, there are a number of structural, as well as plumbing and electrical and HVAC problems, inherent to the home. As a result, Petitioner desires to raze the existing home and replace it with a new home in the same footprint as the old. Petitioner also plans to keep the existing wood frame garage behind the proposed new home. Photographs of the existing home and areas surrounding the home were marked and accepted into evidence as Petitioner's Exhibits 3A through 3K.

In order to make the needed improvements, Petitioner is in need of variance relief for the open projection porch that will be attached to the new dwelling. As to the proposed new dwelling, Mr. Doak indicated that he has been in contact with the Zoning Review Office and, because of the deteriorating condition of the existing home, had been informed that if he presented documentation that the home was structurally unsound, Petitioner would not be required to obtain zoning relief for a new home that would be constructed in the same footprint

as the existing home. Hence, as shown on the site plan, the only variance needed would be for that part of the proposed porch to be located around the southeast side (side yard) of the property.

In support of the variance request, Mr. Doak presented a letter dated October 6, 2008 from Jerry Knoedler, Jr. with JJK Contracting, Inc. in Kingsville, MD. This letter was marked and accepted into evidence as Petitioner's Exhibit 4. Mr. Knoedler indicated that he met with Petitioner and conducted a walk-through inspection of the existing home. His inspection revealed dated galvanized plumbing, asbestos siding, non-grounded electrical wiring, various areas of rotting wood, and signs of severe settlement through the years as evidenced by foundation cracking and the unleveling of floors. He also commented that a house of this age would typically contain lead-based paint on the walls as well. Because of these factors, Mr. Knoedler believes the existing home is structurally unsound, and would be cost prohibitive to repair. In his opinion, the home should be razed and replaced with a new home on the same footprint.

Mr. Doak indicated that the limitations of the lot itself and the requirements of the current zoning regulations drive the need for the variance in this R.C.5 Zone. In particular, the lot is very long and narrow, thereby limiting the options on improvements and new construction. In addition, the subject property and existing dwelling predate the adoption of the Zoning Regulations, and in particular, the R.C.5 Zoning classification. Indeed, the existing home does not meet the minimum area and side yard setback requirement and is, therefore, nonconforming. For example, the R.C.5 Zone requires lot sizes of at least 1.5 acres and side yard setbacks to property lines of 50 feet. As shown on the site plan, even the existing home does not meet those area and setback requirements.

Petitioner proposes a 2,500 square foot home that will have a similar look and aesthetic character as the existing home. It will contain three bedrooms and 3½ bathrooms. In addition, the existing home has a very small cellar. The new home will have a full basement, again on the same footprint as the old. Elevation drawings were marked and accepted into evidence as Petitioner's Exhibit 7. As part of the new home's architecture, there will be a wood porch attached to the front of the home and will wrap around the right side of the home. It is at this northeast side of the home where the variance of 25 feet is requested for the open porch in lieu of the 37½ feet that is required. It should also be noted that the asphalt driveway access to the property from Bradshaw Road that runs up this side of the property to the rear where the garage is located will be unchanged.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated November 5, 2008 which indicate they do not oppose Petitioner's request. However, a finding of compliance with the R.C.5 Performance Standards will need to be addressed. These Performance Standards can be found in Section 1A04.4 of the B.C.Z.R. Comments were also 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 well and septic system must be conducted. Soil evaluations must be conducted to determine a septic area. A well yield test is required. In response to this comment, Mr. Doak explained that the new home will utilize the existing well and septic systems. He also submitted a letter dated October 8, 2008 from Vincent E. Milan with Suburban Excavating & Contracting Co., Inc. in Kingsville, MD that was marked and accepted into evidence as Petitioner's Exhibit 5. Mr. Milan indicated that the existing septic system was pumped and inspected on October 7, 2008 and appears to be in good

working order. Finally, Mr. Doak also submitted letters of support dated October 20, 2008 from nearby neighbors, Kari-Ann Scavuzzo-Knoedler of 8042 Bradshaw Road and Charles and Margaret Felbinger of 8044 Bradshaw Road, which were marked and accepted into evidence as Petitioner's Exhibits 6A and 6B, respectively.

Considering of 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 request. In particular, the property's shape, which is very long and narrow, poses limitations on Petitioner's ability to make needed improvements or replace the existing home altogether as planned by Petitioner. In addition, the site plan also has a topographical overlay that depicts the slopes and terrain of the property. It shows that the property slopes gradually upward from Bradshaw Road, but is then more pronounced from the garage location to the rear of the property, again limiting Petitioner's options for improvements. Finally, the age of the dwelling presents perhaps the most compelling characteristic in favor of Petitioner's request -- from a zoning perspective. In short, the property predates any zoning regulations and the current R.C.5 regulations place restrictions on the existing dwelling -- and on a subsequent replacement dwelling -- that could not be met without severely limiting the improvement options for the property. Hence, the imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district.

Finally, I find this variance request for the open projection porch 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. The wrap-around porch will provide an attractive architectural feature that gives the new home a styled look.

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

THEREFORE, IT IS ORDERED this 9th day of December, 2008 by this Deputy Zoning Commissioner, that Petitioner's variance relief request from Section 301.1.A of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed open projection (porch) to have a side yard setback of 25 feet in lieu of the required 37½ feet be and is 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 are 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.
2. Prior to obtaining a building permit, Petitioner shall submit the following information to the Office of Planning for their determination that the proposed structure meets the R.C.5 Performance Standards:
 - a. Photographs of existing adjacent dwellings for comparison with Petitioner's proposed design.
 - b. Building elevations (all sides) of the proposed dwelling for review and approval. The proposed dwelling shall be compatible in size and architectural detail as that of the existing dwellings in the area. The exterior of the proposed building(s) shall use the same finish materials and architectural details on the front, side and rear elevations where possible. Use of quality material such as brick, stone or cedar is encouraged, in lieu of vinyl siding.
 - c. Decks, balconies, windows, dormers, chimneys and porches shall be designed as a component of the building following dominant building lines. Decks shall be screened to minimize visibility from a public street.
 - d. All accessory structures shall be designed at a scale appropriate to the dwelling, and garages shall be of the same architectural theme as the principal building on the site, providing consistency in materials, colors, roof pitch and style.

- e. Landscaping shall be provided along the public road, if it is consistent with the existing streetscape.

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