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| IN RE: PETITIONS FOR SPECIAL HEARING * | BEFORE THE |
| AND VARIANCE | |
| SW/S Gunpowder Road, 383' NW c/line of * | ZONING COMMISSIONER |
| Jerome Road | |
| (5660 Gunpowder Road) * | OF |
| 11 th Election District | |
| 5 th Council District * | BALTIMORE COUNTY |
| Den Canh Phan, et ux * | Case No. 2009-0105-SPHA |
| Petitioners | |

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owners of the property, Thanh Tam Nguyen and her husband Den Canh Phan. Special hearing relief is requested to allow an existing accessory structure larger than the principal dwelling on **Lot #2**. The Petitioners also request variance relief from Sections 1B02.3C.1, 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), for (**Lot #1**), to allow an existing dwelling with a side yard setback of 5 feet in lieu of the minimum required setback of 15 feet and to allow an existing swimming pool in the front and side yards in lieu of the required rear yard, and for (**Lot #2**), to allow an existing dwelling with a side yard setback of 9 feet and front yard setback of 11 feet in lieu of the required 15 and 40 feet, respectively, and to allow an existing accessory structure (garage) with a height of 21 feet in lieu of the maximum allowed 15 feet. The subject property and the 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 these petitions were Thanh Tam Nguyen and Den Canh Phan, property owners, and J. Scott Dallas, of J.S. Dallas, Inc., the consultant who prepared the site plan for this property. A number of adjacent residents appeared

as concerned citizens, namely Glenn Bittorf, Chris Betts, Gary A. Lentz, Thomas Neuwiller and Kimberly Fretwell. In addition, these neighbors presented a petition signed by some 65 persons who reside in the community expressing opposition to the request, which was marked as Protestants' Exhibit 2.

It should be noted that a significant amount of testimony and evidence submitted at the hearing by the neighbors in attendance was relative to the conversion of the dwellings to house multiple families and the negative impacts regarding the numerous calls for service by County Police, Fire and Solid Waste agencies. The types of calls varied from noise complaints and disturbances, to a stabbing and shooting incident. Although complaints were not registered with the Code Enforcement Division of the Department of Permits and Development Management – Section 506 of the B.C.Z.R. vests the Zoning Commissioner with authority to conduct hearings involving any violation or alleged violation/non-compliance with any zoning regulation. Similarly, Section 500.7 allows the Zoning Commissioner to pass such Orders as shall be necessary for the proper enforcement of all zoning regulations.

Notwithstanding the indiscretions that have taken place on the property since the Petitioners purchase in December, 2006 the facts surrounding the actual petitions are clear and are, for the most part, not in dispute. The first person to testify was J. Scott Dallas, a property line surveyor who was accepted as an expert in the area of engineering and land planning. He stated that he is familiar with the property located at 5660 Gunpowder Road between Pulaski Highway (MD Rt. 40) and Philadelphia Road (MD Rt. 7). He visited the site which he describes as an irregularly “flagged shaped” property and prepared the plat which indicates all lot dimensions, improvements, adjoining streets and rights-of-way as well as all other pertinent environmental features of the site. The property is approximately 1.47 acres in gross area zoned

D.R. 2 and had been improved for many years by two existing dwellings. It is the owners' desire to divide this long-existing situation of two houses on a single lot into two lots. The proposed lot line between the two residences creates a need for variances from the applicable requirements as to minimum front and side yard setbacks and legitimize the size and location of previously constructed structures. It was Mr. Dallas' opinion that the houses which have long-existed on the property and are (except for the multiple family occupancy) in complete harmony with the rest of the neighborhood. As illustrated on Exhibit 1, proposed Lot 1 is improved with a one-story brick dwelling featuring a large patio and in-ground swimming pool (eastern side) and will contain 40,000 square feet in area. Lot 2 was improved with a two-story dwelling positioned on the southeastern corner of the lot presently accessed from Gunpowder Road by means of a panhandle driveway that runs along the western boundary of the site past proposed Lot 1. This lot (Lot 2) will contain 20,000 square feet. A large garage was constructed centrally on this lot by the previous owner and is 66 feet deep x 32 feet wide x 21 feet high. It had been used to house antique cars and for storage on the upper level. The evidence offered was that the approved configuration of these lots would result in the most logical and compatible lot configuration possible. Neither of these two lots can be further improved with additional dwellings.

One of the issues raised by the zoning office is whether the existing garage can be larger than the existing house on Lot 2 and whether it can remain rather than being razed. Testimony revealed that the garage is in excellent condition and will be accessory to the dwelling on Lot 2. There is no reason for it to be taken down. It is structurally sound and is and has been in continuous use for cars and storage. The garage would not be used as second dwelling or serve

as an apartment. Petitioners agree that they and their assigns will not put a kitchen in the garage or use it commercially.

The “small lot table” set out in Section 1B02.3C.1 of the B.C.Z.R. applies to the subject property and requires that each of these lots be a minimum of 20,000 square feet in size. Clearly, both lots would exceed that minimum required size. The legal owners purchased the subject property in its current state, had no role in the construction of the existing dwellings or accessory structures, and own no adjoining land. Both homes are currently served by public water and sewer systems. The plan introduced at the hearing illustrates all existing improvements, the reconfigured lot lines to be approved by the Design Review Committee (DRC), and includes all information required by the zoning petition submission checklist depicting the subject property accurately. It was Mr. Dallas’ further opinion that a grant of the requested variances would be in harmony with the intent of the zoning regulations and would create no injury to public health, safety or general welfare.

Testimony was next received by Den Cahn Phan, an owner of the property. Mr. Phan and his wife purchased the property as the two-story structure at the rear of the lot was advertised as a multiple family building with three apartments. He and his family plan to leave their present home in the Dundalk area and move into the one-story rancher (Lot 1), but wish to wait until their nine year old daughter finishes elementary school and to allow time to sell their hair salon business. Since the purchase, however, they have (as have his neighbors) become frustrated and spent considerable time and money in court attempting to evict tenants residing in the apartment structure (Lot 2). It is now his intention to subdivide the property, sell the improvements on proposed Lot 2 and reside on Lot 1. Without the requested variances, he cannot make full use of the property as separate residences and convey Lot 2.

The neighbors who appeared primarily expressed concern about the negative impacts of a multiple family use at this location. Gary Lentz, who for 15 years has resided to the northwest of the property, provided a historical overview of its use. Apparently, in the early 1950s a family named Huskins or Malone, had resided in the one-story brick rancher and had a number of children. The two-story home at the rear of the property was built for the children who then used the home for three apartments. The property was later sold to George Stoecker, who resided in the rancher and rented out the two-story home as apartments. Stoecker build the garage to house his antique car collection. The neighbors indicated that the renters never caused problems as Stoecker ran a tight ship and took good care of the property. Following the sale to the Petitioners in 2006, the disturbances started – dogs barked, dirt bikes were ridden without regard to neighboring property lines, calls for service and Police responses generated from or directed to the property were required. Ms. Fretwell, residing across the street, has young children and became afraid for their safety. Mr. Bittorf, who works for the County, spoke of trash associated with solid waste and recycling pickups at the property that caused continuing problems. Mr. Betts believed auto repairs and commercial uses were being made of the garage and disabled vehicles were kept on the property. Likewise, Mr. Neuwiller did not oppose the garage or swimming pool structures where located as they had been on the property for years. He did voice concern about how the property was being used, that the Petitioners were not taking responsibility for what was taking place on the premises and their failure to maintain the property in good order.

At the conclusion of the hearing, I informed the parties of the pertinent issues before me and gave them time to speak to one another. While, at first blush, the number of variances requested by the Petitioners might tend to signal a dramatic change from the existing conditions

on the property and in the neighborhood. In fact, this is not so. The uncontradicted testimony is that these residences and accessory structures have existed on the lot(s) for 40 to 50 years. The adjoining neighbor that shares the eastern boundary and is most affected (5702 Gunpowder Road) has no objection – *see* Petitioners’ Exhibit 2. After further discussions, the neighbors who appeared expressed no objection to the variances and other relief sought and would indeed support the proposed subdivision of the property that would allow in-fee ownership for single family use rather than rental units.

The evidence and testimony was substantial in showing the existing conditions and existing improvements documented the subject property unique to other similarly zoned property in the community. I am persuaded to grant the relief requested. There were no adverse Zoning Advisory Committee (ZAC) comments submitted by any County reviewing agency. There is no justification to force the garage or pool to be razed only to have them replaced later. Section 400 of the B.C.Z.R. pertaining specifically to accessory structures in residential zones does not prohibit an accessory structure from being larger in size than the principal use. Historically, it has been the Zoning Review Office’s interpretation of the “accessory building” definition as contained in Section 101 of the B.C.Z.R. that leads to this conclusion. The definition of accessory building in that Section states in pertinent part – “...one which is subordinate and customarily incidental to and on the same lot with a main building...”. While I recognize the concern, I am convinced that the garage will continue to be used for vehicles and storage. I further find that the relief granted will not have a detrimental impact to the health, safety or general welfare of the surrounding locale and is appropriate in this instance. The relief requested is the minimum relief necessary to permit each existing dwelling to be located on its own lot such that it can be separately financed and/or conveyed. No additional residential density results

from the requested relief and the relief brings the subject property into compliance with development already existing in the community – each house on its own lot. The spirit and intent of the B.C.Z.R. will be observed by granting the final relief necessary for recordation of the reconfigured lot lines yielding compatible, existing development.

The issues raised in the petitions are pursuant to the authority granted in Sections 307 and 500.7 of the B.C.Z.R. Thus, my decision is based on the zoning of the subject property, the proposed dimensions for each lot and other zoning defined issues. I do not have the authority, nor will this decision attempt, to determine issues of processing limited exemptions from the Development Regulations which have been relegated by the County Council to the Development Review Committee. See *Longmeadow Association, Inc. et al, v. Druid Ridge LLP, et al*, 393 Md. 478 (2006) and County Council Bill 54-05. However, a review of the facts, evidence and testimony presented in this case reveals that the parties are in agreement and they jointly request a reconfiguration of existing lot of record that will result in lots with frontage on and served by a public roadway. Moreover, I find that the proposal will not be detrimental to the health, safety or general welfare of the surrounding locale nor create congestion in the roads or interfere with public utilities.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and for the reasons set forth herein, the relief requested shall be granted with conditions.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 30TH day of December, 2008, that the Petition for Special Hearing seeking approval to permit an existing accessory structure larger than the principal dwelling on proposed **Lot #2**, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 1B02.3C.1, 400.1 and 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.), for **(Lot #1)**, to allow an existing dwelling with a side yard setback of 5 feet in lieu of the minimum required setback of 15 feet and to allow an existing swimming pool in the front and side yards in lieu of the required rear yard, and for **(Lot #2)**, to allow an existing dwelling with a side yard setback of 9 feet and front yard setback of 11 feet in lieu of the required 15 and 40 feet, respectively, and to allow an existing accessory structure (garage) with a height of 21 feet in lieu of the maximum allowed 15 feet, in accordance with Petitioners' Exhibit 1, be and are hereby GRANTED; subject to the following restrictions which are conditions precedent to the relief granted herein:

1. ADVISORY: The Petitioners shall be required to apply to the Development Review Committee for a limited exemption under Baltimore County Code (B.C.C.) Section 32-4-106(a)(1)(viii) concerning the lot line adjustment.
2. The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
3. Within six months (180 days) of the date hereof, the Petitioners shall discontinue any multi-family, boarding or rooming house activities and remove from the premises any disabled vehicles, car parts, and trash.
4. The Petitioners shall permit a representative of the Code Enforcement Division of the Department of Permits and Development Management (DPDM) reasonable access to the property and dwellings thereon in order to inspect them and to assure compliance with this Order and the uses on proposed Lots 1 and 2 to those as defined in Section 102 of the B.C.Z.R.
5. Petitioners shall comply with the Zoning Advisory Committee (ZAC) comments submitted by the Department of Environmental Protection and Resource Management (DEPRM), and the Office of Planning. Copies of those comments, dated November 20, 2008, and December 3, 2008, respectively, have been attached hereto and are made a part hereof.

6. When applying for a 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 made within thirty (30) days of the date of this Order.

_____ SIGNED _____
WILLIAM J. WISEMAN, III
Zoning Commissioner
of Baltimore County