

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
N side of Holly Beach Road, 102 feet W		
from the c/l of Henrietta Avenue	*	DEPUTY ZONING
15 <sup>th</sup> Election District		
6 <sup>th</sup> Councilmanic District	*	COMMISSIONER
(2508 Holly Beach Road)		
	*	FOR BALTIMORE COUNTY
<b>Kurt and Alison Hupper</b>		
<i>Petitioners</i>	*	<b>Case No. 2009-0123-A</b>

\* \* \* \* \*

**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, Kurt and Alison Hupper. Petitioners are requesting Variance relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a 42 foot setback from the centerline of a road in lieu of the minimum required 75 feet, and from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure to be located in the side yard in lieu of the rear yard. The subject property and requested relief are more fully described 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 Kurt Hupper. Also appearing in support of the requested relief was James Grammer with McKee & Associates, Inc., the professional land surveyor who prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is a rectangular-shaped lot approximately 100 feet wide and 200 feet deep containing 19,500 square feet or 0.45 acre, more or less, zoned R.C.5. The property is located along the southern shoreline of Middle River. The property comprises Lots 7 and 8 which were originally recorded in the land records in 1913.

The property was at one time improved with a one-story dwelling built in approximately 1919, prior to the existing zoning regulations. There were also several sheds located on the property. Petitioners purchased the property in April 2003 and began cleaning up the lot, unsure of the long term future of the existing dwelling. Following the destructive force of Hurricane Isabel in September 2003 and after consideration of the age and condition of the dwelling, Petitioners decided to raze the dwelling in order to construct a replacement dwelling.

In September, 2007, Petitioners made several variance requests for the property in Case No. 2007-0558-A. Among the variance requests in that case, Petitioners sought approval to permit a 58 foot setback from the centerline of a road in lieu of the minimum required 75 feet. In an Order dated September 19, 2007, the undersigned granted Petitioners' variance requests. At this juncture, Petitioners still wish to utilize the variance requests that were granted in the prior case for the reduced setback from the centerline of the road, as well as to permit lot coverage of 25% in lieu of the maximum permitted 15% for a replacement dwelling and to permit an accessory structure (pool) in the front yard in lieu of the required rear yard; however, due to changes in the design and configuration of the proposed dwelling, Petitioners have come back before this Commission seeking the instant variance relief in order to place the proposed dwelling closer to the street (42 feet from the centerline of the road in lieu of the minimum 75 feet), and to construct a separate garage in the side yard rather than the required rear yard. Petitioners had originally planned for an attached garage, but decided on a separate garage structure because that layout is more prevalent in the community.

In support of the requested relief, Mr. Grammer relied primarily on the same rationale for the original variance requests in Case No. 2007-0558-A. Mr. Grammer indicated that Petitioners desire to locate the replacement dwelling and garage closer to Holly Beach Avenue in order to

have more usable space in the front yard and to preserve the views of the shoreline for themselves as well as their neighbors. In addition, the useable space on the property is severely impacted and limited by the slope of the property and by the depth of the property toward the sandy beach area at the waterfront. Mr. Grammer indicated this makes Petitioners' property unique. They also point to the fact that the adjacent properties along the shoreline to the east (lots 9, 10, and 11 on the site plan) sit further out toward the water by approximately 15 to 20 feet than the subject property. Also, the adjacent properties along the shoreline to the west (lots 3, 4, 5, and 6) have much more gradual slopes to the water than the subject property. Finally, Mr. Grammer, opined that due to the uniqueness of the lot and its configuration, denying the requested variance relief would not allow Petitioners to utilize the lot for its best purpose without practical difficulty or undue hardship. He also opined that the granting the variance requests would not have an adverse effect on any adjacent neighbors (and would in fact improve neighbors' sightlines), nor would granting the variance requests be detrimental to the health, safety, and general welfare of the community.

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 December 1, 2008, which indicate that it does not oppose Petitioners' request, provided the construction complies with the current R.C.5 requirements. In order to make this determination, the Office of Planning will require the submission of additional information, which will be expounded on further in this Order. Comments were received from the Department of Environmental Protection and Resource Management dated November 21, 2008 which indicates that the property must comply with the Chesapeake Bay Critical Area Regulations. The property is located within a Limited Development Area (LDA) of the Chesapeake Bay Critical Area. The

maximum lot coverage permitted is 31.25% which equals 6,093 square feet. The 25% threshold is 4,975 square feet. Mitigation is required between 25% to 31.25% if applicable. There is also a 15% afforestation requirement that must be met on-site.

Considering all the testimony and evidence presented, I am persuaded to grant the variance relief. As I indicated in the earlier case, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. I find that the use of the property is significantly limited by the present location of the existing dwelling and the severe drop off of the property toward the shoreline. This is exacerbated by the fact that the shoreline also contains a large sandy beach area. While the sandy beach may be desirable to a degree, it also effectively shrinks the useable area of the lot for Petitioners. Therefore, I find the property unique in a zoning sense. I also do not believe that allowing a 42 foot setback to the centerline of the road rather than the previously approved 58 feet will have any appreciable impacts. Based on my review of the previous case and the instant matter, it appears the requested change may be more beneficial, especially environmentally with less impervious area since the home would be closer to the road, and with more open areas along the shoreline.

I also find that strict compliance with the zoning regulations of Baltimore County would result in practical difficulty and undue hardship, and would deny Petitioners the best use of their property. Finally, I find that these variances can be granted in strict harmony with the spirit and intent of the zoning regulations and the ZAC comments, and in such a manner as to grant relief without injury to the public, health, safety or general welfare. It appears that Petitioners' intentions with regard to the subject property are consistent with the appearances and uses of the properties nearby -- especially with regard to locating a separate garage structure in the side yard, closer to the road. As shown on the site plan, this layout seems to be more the norm in this area.

Thus, I find that relief can be granted such that there will be no detrimental impact to adjacent properties or the surrounding locale. The proposed development must also comply with the Chesapeake Bay Critical Area regulations.

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

THEREFORE, IT IS ORDERED this 5<sup>th</sup> day of February, 2009 by this Deputy Zoning Commissioner, that Petitioners' Variance request from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a 42 foot setback from the centerline of a road in lieu of the minimum required 75 feet, and from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure to be located in the side yard in lieu of the rear yard be and are hereby GRANTED, subject to the following:

1. Petitioners are advised that they may apply for any required building permits 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, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).
3. The property is located within a Limited Development Area (LDA) of the Chesapeake Bay Critical Area. The maximum lot coverage permitted is 31.25% which equals 6,093 square feet. The 25% threshold is 4,975 square feet. Mitigation is required between 25% to 31.25% if applicable.
4. There is a 15% afforestation requirement that must be met on-site.

5. Prior to obtaining a building permit, Petitioners 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. Submit photographs of existing adjacent dwellings to the Office of Planning.
  - b. Submit building elevations (all sides) of the proposed dwelling to the Office of Planning for review and approval. The proposed dwelling shall be compatible in size and architectural detail as that of the existing dwellings in the area. Ensure that the exterior of the proposed building(s) use the same finish materials and architectural details on the front, side and rear elevations. Use of quality material such as brick, stone or cedar is encouraged.
  - c. Design all decks, balconies, windows, dormers, chimneys and porches as a component of the building following dominant building lines. Decks shall be screened to minimize visibility from a public street.
  - d. Design all accessory structures at a scale appropriate to the dwelling and design garages with the same architectural theme as the principal building, on the site, providing consistency in materials, colors, roof pitch and style.
  - e. Provide landscaping 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