

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NW side Holly Neck Road, 330 feet NE		
of c/l of Schaffers Road	*	DEPUTY ZONING
15 th Election District		
5 th Councilmanic District	*	COMMISSIONER
(2008 Holly Neck Road)		
	*	FOR BALTIMORE COUNTY
Shelly Legeer-Heimbach		
<i>Petitioner</i>	*	CASE NO. 2009-0134-A

* * * * *

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 owner of the subject property, Shelly Legeer-Heimbach. Petitioner is requesting variance relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed replacement dwelling to have side yard setbacks of 15 and 16 feet, respectively, in lieu of the required 50 feet each, and a front yard setback of 105 feet. The subject property and requested relief are more fully depicted on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests was Petitioner Shelly Legeer-Heimbach and her husband, John Heimbach, Jr. Also appearing in support of the requested relief were Lee Giroux with Permit Management LLC and Victoria Meyer with Maryland Building Permits, Petitioner’s consultants. 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 property consisting of approximately 19,500 square feet or 0.447 acre, more or less, zoned R.C.5. It is 100 feet wide by 195 feet deep. The property is located on the north side of Holly Neck Road, east of Back River Neck Road, in the Essex area of Baltimore County. The property is part

of the Cedar Beach Subdivision No. 2 and is currently improved with an existing single-family one-story dwelling that was constructed in 1930. The dwelling comprises approximately 960 square feet. Photographs of the property and existing dwelling, as well as adjacent properties, were marked and accepted into evidence as Petitioner's Exhibits 2A through 2H. The photographs show the property with a vinyl split rail fence along the front, with fencing delineating access to the driveway. The dwelling is a rather unremarkable, rectangular-shaped structure with light blue siding and a concrete block foundation. The placement of the dwelling is unusual, however, in that rather than facing the road, the dwelling is placed length-wise on the property -- providing the main, front entrance to the home on the side.

Petitioner has lived at the subject property since 1989. At this juncture, Petitioner desires to raze the existing dwelling and replace with a similar, rancher-style dwelling -- one that would be slightly larger than the existing dwelling and with an attached garage -- with the comfort and efficiency of a newer home. In addition, Petitioner desires a more traditional layout and configuration of the home on the property, with the front of the home facing Holly Neck Road. In short, rather than appearing long and thin, as the current dwelling does, the new proposed dwelling would appear wider on the property, but not as deep. As a result, Petitioner is in need of variance relief from the 50 foot side yard setback requirements, as well as the front yard setback requirement of 150 feet from the centerline of a collector road.

In support of the variance requests, Ms. Giroux, Petitioner's consultant, pointed out that Petitioner's property is a double wide lot consisting of 100 feet. The lots in this subdivision were originally laid out as 50 foot wide lots, as evidenced by the subdivision plat that was marked and accepted into evidence as Petitioner's Exhibit 3. Ms. Giroux also indicated that this subdivision was recorded on July 4, 1941, prior to the adoption of the Zoning Regulations and certainly prior

to the imposition of zoning on the subject property. She also pointed to the unusual configuration of the existing dwelling on the property, as well as the existence of wetlands on the other side of Holly Neck Road. Finally, Petitioner submitted three letters of support from adjacent neighbors which were marked and accepted into evidence as Petitioner's Exhibits 4A through 4C. These letters indicate no objection to Petitioner's plans to raze the existing home and replace it with a new home as depicted on the site plan.

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 9, 2008 which indicate that it does not oppose Petitioner's 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 December 23, 2008 which indicate that the property must comply with the Chesapeake Bay Critical Area Regulations. The property is located within a Limited Development Area in the Chesapeake Bay Critical Area and must comply with maximum lot overage limits and a minimum 15% forest cover requirement. The site plan must show all structures, driveways, walkways, decks, etc. Petitioner is to contact the Environmental Impact Review Division at 410-887-3980 for additional details.

Considering of all the testimony and evidence presented, I find 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, I find the odd configuration of the existing structure on the property to be unique. I also find that the imposition of the current Zoning Regulations has a disproportionate impact on the subject property in that it predates the

adoption of such regulations. In addition, I find that practical difficulty or unreasonable hardship would befall Petitioner if the relief were not granted. It is impossible for Petitioner to comply in any event with the 50 foot side yard setback requirement, given that Petitioner's lot is 100 feet wide.

Finally, I find the variance requests 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. Although Holly Neck Road is deemed a collector road for the purposes of the front yard setback requirement of 150 feet to the centerline of the road, based on the use and character of the road in this area near the waterfront, I believe 105 feet in this particular instance is sufficient to meet the spirit and intent of the Zoning Regulations.

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 requests should be granted.

THEREFORE, IT IS ORDERED this 9th day of February, 2009 by this Deputy Zoning Commissioner, that Petitioner's Variance request from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed replacement dwelling to have side yard setbacks of 15 and 16 feet, respectively, in lieu of the required 50 feet each, and a front yard setback of 105 feet be and are hereby GRANTED. The relief granted herein shall be subject to the following:

1. Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her 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. 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.
3. 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).
4. The property is located within a Limited Development Area in the Chesapeake Bay Critical Area and must comply with maximum lot coverage limits and a minimum 15% forest cover requirement. The site plan must show all structures, driveways, walkways, decks, etc. Petitioner is to contact the Environmental Impact Review Division at 410-887-3980 for details.

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