

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Cascade View Court, NE corner of		
York Road and Cascade View Court	*	DEPUTY ZONING
7 th Election District		
3 rd Councilmanic District	*	COMMISSIONER
(602 Cascade View Court)		
	*	FOR BALTIMORE COUNTY
James A. Fahey, III		
<i>Petitioner</i>	*	CASE NO. 2009-0167-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, James A. Fahey, III. Petitioner is requesting variance relief as follows:

- To permit a future accessory building (presently an existing principal dwelling) with a height of 18 feet in lieu of the maximum permitted 15 feet pursuant to Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.); and
- To permit a future accessory building (presently and existing principal dwelling) at a location in the front yard outside of the third of the lot farthest removed from any street pursuant to Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.); and
- For such other and further relief as may be deemed necessary by Zoning Commissioner.

The subject property and requested relief are more fully depicted on the site plan that 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 James A. Fahey, III and Lawrence E. Schmidt, Esquire, attorney for Petitioner. Also appearing in support of the requested relief was J. Scott Dallas with J.S. Dallas, Inc., the property line surveyor who prepared the site plan. Appearing as Protestants opposed to the requested

relief were nearby neighbors Tim Kobus and Colleen Pearce of 601 Cascade View Court.¹

Testimony and evidence revealed that the subject property is an irregular-shaped property consisting of approximately 3.00 acres, more or less, zoned R.C.4. The property is a corner lot located on the east side of York Road and the north side of Cascade View Court, approximately one mile east of Interstate 83 and south of Wiseburg Road in the Parkton area of northern Baltimore County. As shown on the site plan, the property has approximately 156 feet of frontage along York Road and there is an existing driveway that runs from York Road in an easterly direction across the property to an existing one-story concrete block building. As also shown on the site plan, the property was at one time improved with a two-story dwelling located close to York Road that was built in the late 1800's. The subject property also has access via a driveway from Cascade View Court.

By way of background information, Petitioner's attorney, Mr. Schmidt, gave an overview of the case and proffered the testimony, which indicated that Petitioner purchased the property in September 2003. At that time, the property had access only from York Road and was improved with the aforementioned two-story dwelling. Due to age and neglect, this small dwelling (approximately 800 square feet) was in a state of disrepair. Also located on the property was the aforementioned one-story concrete block building. This building was built by previous owners decades before and was used for commercial purposes as a sales office for a company that sold

¹ Ms. Pearce and Mr. Kobus attended the hearing and presented testimony and evidence in opposition to Petitioner's zoning variance requests. The undersigned found at the outset of the hearing that the property had been properly posted and published, giving all interested persons notice of the date, time, place, and subject matter of the hearing, which was convened on Friday, February 20, 2009. At the conclusion of the hearing, the matter was closed in order for the undersigned to consider the testimony and evidence presented at the hearing and prepare an Order; thereafter, beginning the following week, the undersigned received several emails from neighbors in the "Little Falls" neighborhood. Two of the emails -- from Glen and Justine Buchanan dated February 23, 2009 and Teresa and John Blatchley dated February 25, 2009 -- expressed opposition to the variance requests. The third, from Derrick and Kelly Fleming dated February 24, 2009, expressed concern about the requests, but otherwise offered to welcome Petitioner to the community if his new address would make his property part of the Little Falls community. Although these emails have been printed and placed in the case file, because the hearing was concluded and the evidence closed, they will not be considered by the undersigned in deciding this matter. They are being retained in the case file for informational purposes only.

brooms, according to Mr. Schmidt. As a result of the deteriorating condition of the dwelling as shown in photographs that were marked and accepted into evidence as Petitioner's Exhibits 3A through 3C, it was razed pursuant to razing permit no. B704338.

Petitioner also converted the commercial building into a residence -- remodeling the interior and attempting to improve the appearance of the exterior -- where he and his 14 year old son have lived since 2003. Photographs of the building prior to the conversion were marked and accepted into evidence as Petitioner's Exhibits 3D through 3F. These photographs show a drab, featureless building painted white with virtually no landscaping. The photographs also show an area at the west side of the building where the driveway from York Road leads to what appears to be a loading dock with a rollover accordion style garage door. Additional photographs of the building following the conversion were marked and accepted into evidence as Petitioner's Exhibits 3G through 3J and depict some of the efforts Petitioner made to have the concrete building appear more residential; i.e. -- the loading dock space with the rollover garage door was made smaller and replaced with a residential style sliding glass door, the exterior was painted a light tan color, and landscaping was added.

It is also noteworthy that during the last several years, the property to the immediate south of the subject property has been developed with upscale single-family homes. As depicted in the Development Plan that was marked and accepted into evidence as Petitioner's Exhibit 2, this property, known as the "Miller/Tipper Property" was developed in 2006 on approximately 72 acres and resulted in 14 single-family dwellings on two newly created public roads known as Cascade View Court and Little Falls Court, and a large conservancy area to the south and east.

At this juncture, Petitioner desires to construct a more "traditional" style single-family dwelling on the subject property, which as shown on the site plan would be placed further back toward the northeast corner of the property. In anticipation of this plan, Petitioner recently

successfully changed the mailing and tax address for the property from 18035 York Road to 602 Cascade View Court, and also installed the aforementioned driveway from the north side of Cascade View Court. Presently, that driveway ends at the location of the concrete block residence, however Petitioner desires to extend the driveway when the new home is built. In addition to plans for a new home, Petitioner also desires to keep the existing concrete block building as an accessory structure with a height of 18 feet and a location in the front yard for use as a work-out/exercise area and for storage of household items and lawn equipment; hence the reason for the instant Petition for Variance.

In support of the variance requests, Mr. Schmidt referenced several unusual characteristics of the property. Most obvious is that the property is, on the whole, irregular-shaped. Near the area of York Road and along Cascade View Court, the property is fairly narrow, but it then opens up substantially to a more conventional square shape. One reason this larger area is the preferred space where Petitioner plans to build a home is because it poses no necessity for relief from setback requirements. As previously mentioned, another unusual feature is that the subject property is adjacent to a new subdivision known as "Little Falls." These two-story luxury homes were built in 2006 and range in size from approximately 3,700 square feet to almost 6,000 square feet (as compared with Petitioner's existing one-story residence that is approximately 1,700 square feet). Photographs of this new subdivision were marked and accepted into evidence as Petitioner's Exhibits 3K through 3M. As a result of this subdivision, Petitioner's property has become a "corner lot," thereby subjecting the subject property to additional zoning limitations. Finally, Mr. Schmidt maintains that it would be impractical and wasteful to remove the existing building. The structure was built decades ago when the properties surrounding the subject property were largely unimproved and wooded. In

addition, Petitioner has expended substantial time and expense to upgrade the appearance of the building so as to blend in more with the surroundings.

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 January 12, 2009 which indicates they do not oppose Petitioner's request provided certain conditions are met. Since the future accessory building was once a dwelling, it should have all the sleeping quarters, living areas, kitchen and bathroom facilities removed once a use and occupancy permit has been issued for the principle dwelling to be constructed. The future accessory building should also not be used for commercial purposes. Comments were also received from the Department of Environmental Protection and Resource Management (DEPRM) dated January 30, 2009. The Ground Water Management Division of DEPRM indicates that prior to approval of building permits, soil evaluations must be conducted to determine septic reserve areas for the proposed house and for the existing structure if plumbing is maintained. A well yield test will be required on the existing well. Petitioner should contact the Ground Water Management Division for more information. Comments from Wally S. Lippincott, Jr. of the Agricultural Preservation Division of DEPRM indicates that the request is not supported because the property is zoned R.C.4 and the request seeks to retain impervious surfaces on the property. The removal of the existing dwelling and driveway to be replaced with the new dwelling and driveway would be more consistent with the purpose of the zone which is to protect the water quality of the reservoirs. The best way to protect the water quality is to limit impervious surfaces. As such, in Mr. Lippincott's view, it would not appear appropriate to grant a variance that is contrary to that purpose.

In response to the Office of Planning's comments that essentially all evidence of a residence be removed from the future accessory building, Mr. Schmidt indicated that Petitioner's

plan is to do just that. Mr. Schmidt expressly stated that Petitioner will comply with Planning comments and that it is not Petitioner's intent to utilize the building as a "second dwelling;" however, Mr. Schmidt requested that the building be permitted to retain running water and a bathroom with shower for work-out purposes, but that the kitchen, living areas, and sleeping quarters would be removed.

Following Petitioner's case, interested neighbors Ms. Pearce and Mr. Kobus testified in opposition to the requested relief. According to their testimony, they believe Petitioner has been less than forthcoming as to his actual intentions regarding his property and also believe that Petitioner has skirted the County's permitting requirements in razing the previous dwelling and making improvements to his property. They purchased their property at 601 Cascade View Court in 2006, located directly across the street from Petitioner's property and in particular the concrete block dwelling that now fronts Cascade View Court and which Petitioner has resided in since 2003. It was their understanding at the time they purchased that Cascade View Court would belong to the Little Falls community, as well as a strip of land on Petitioner's side of the court. Photographs depicting Cascade View Court and the driveway to Protestants' home and the recently added driveway to Petitioner's property were marked and accepted into evidence as Protestants' Exhibits 1B through 1D. They were disappointed to find out that this court was a public road and that Petitioner owned or had a right-of-way on the north side of Cascade View Court, just like any adjacent property owner. By tapping into the court and making that road his entrance and street address, they feel Petitioner is taking advantage of his proximity to this new upscale neighborhood at their property values' expense.

As to the merits of Petitioner's request, Mr. Kobus and Ms. Pearce oppose allowing the concrete structure to remain in the event a dwelling is constructed on the property as planned. In spite of Petitioner's efforts to make the concrete structure more visually appealing, they contend

that the building continues to be an eyesore. If Petitioner does indeed plan to build a more traditional home on the property, more in character with the newer homes in the Little Falls community, they are certainly supportive of that; however, they would also prefer that the existing concrete block building be removed. Notwithstanding the reasons set forth by Petitioner to keep the building, they do not believe any compelling rationale exists for it to remain. They submitted additional photographs that were marked and accepted into evidence as Protestants' Exhibits 1E and 1F. These photographs show the building as it appears from their property. In particular, the windows on the side of the building that faces Cascade View Court do not appear to be residential style windows -- they appear much smaller. The perceived negative appearance of the building impacts Ms. Pearce and Mr. Kobus more than others in the neighborhood because they live directly across the street on Cascade View Court. Hence, they believe their property's appearance and value will be diminished if the building is permitted to remain as an accessory structure.

I have considered all of the testimony and evidence presented very carefully, and despite Mr. Kobus' and Ms. Pearce's understandable opposition to the request, as well as Mr. Lippincott's negative DEPRM comment, I am persuaded to grant Petitioner's request and allow the existing building to remain in the front yard with a height of 18 feet. I believe there are certain unique characteristics of the property and I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. In particular, the property obviously predates the adoption of Zoning Regulations in this area of the County, given that the original dwelling was constructed in the 1880's. In addition, the development of the adjacent Miller/Tipper Property has created zoning limitations and requirements that did not exist previously and are not attributable to Petitioner. This results in the type of practical restriction imposed by an abutting property that affects the use of the subject

property. *See, Trinity Assembly v. Baltimore County*, 407, Md. 53, 81 (2008). Moreover, testimony indicated that the existing building was constructed sometime in the 1960's and is arguably a nonconforming use. Hence, I find that the imposition of zoning disproportionately impacts the subject property as compared with others in the surrounding community. I also agree with Petitioner in this instance that requiring the removal of this building would be a wasteful and otherwise unnecessary end to a useful and structurally sound building. It is unknown whether this building was constructed in compliance with use or area regulations that may have applied to this property -- indeed, that issue is not before this Commission; however, I do believe the structure can serve a proper function as an accessory building in these circumstances.

I further find that the variance requests can be granted in strict harmony with the spirit and intent of the B.C.Z.R., and in such a manner as to grant relief without injury to the public health, safety and general welfare. In granting the requests, I shall impose conditions that will hopefully lessen the visual impact of the accessory structure.

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 Petitioner's variance requests should be granted with conditions.

THEREFORE, IT IS ORDERED this 13th day of March, 2009 by this Deputy Zoning Commissioner, that Petitioner's variance requests as follows:

- To permit a future accessory building (presently an existing principal dwelling) with a height of 18 feet in lieu of the maximum permitted 15 feet pursuant to Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.); and
- To permit a future accessory building (presently and existing principal dwelling) at a location in the front yard outside of the third of the lot farthest removed from any street pursuant to Section 400.1 of the B.C.Z.R.,

be and are hereby GRANTED. The following shall be conditions precedent to the relief granted herein:

1. Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is 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. Since the future accessory building is at this time used as a dwelling, once a use and occupancy permit has been issued for the principle dwelling to be constructed, the accessory building shall have all the sleeping quarters, living areas, and kitchen facilities removed. The interior shall have no evidence of bedrooms or other residential uses. The express and limited purpose of this future accessory structure shall be as an exercise/workout area and for storage of lawn and gardening equipment and household items. In keeping with that purpose, the accessory building is permitted to keep one bathroom with shower.
3. Also in keeping with the aforementioned purpose, the future accessory building shall meet all applicable fire codes and regulations, in particular as to windows, for adequate ingress/egress.
4. The future accessory building shall not be used for commercial purposes.
5. Petitioner shall make efforts to lessen the impact of the small windows located on the Cascade View Court side of the future accessory building by adding appropriate window treatments that give it a more residential style, such as shutters or window boxes for flowers and plants.

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