

IN RE: **PETITION FOR VARIANCE** * BEFORE THE
N/Side Greenbank Road, 125' E c/line of ZONING COMMISSIONER
Susquehanna Road * OF
(7404 Greenbank Road) * BALTIMORE COUNTY
15th Election District *
6th Council District *
Douglas A. Will, et ux *
Petitioners * **Case No. 2009-0174-A**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Douglas A. Will, and his wife, Laura K. Will. The Petitioners request a variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit side yard setbacks of 8 feet and a lot width of 44 feet in lieu of the required 10 feet and 55 feet, respectively.¹ The subject property and requested relief are more particularly described on the redlined site plan submitted, which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Laura and Douglas Will, property owners, and Buck Jones, with Freestate General Contractors, who is assisting the Petitioners through the permitting process. Appearing as an interested neighbor was Paul Kozloski, and his attorney, John B. Bartkowiak, Jr., Esquire. As evidenced by Petitioners' Exhibits 2A and 2B, the adjacent neighbors, Skip Znamirovski (7406 Greenbank), and Gail Huber & Paul Kozloski (7402 Greenbank), have no objections to the relief requested nor were there any adverse Zoning Advisory Committee (ZAC) comments received from any County

¹ It is worthy to mention that the subject property is irregularly shaped with 44 feet of frontage on the Gunpowder River and *widens to 55 feet* at its border along Greenbank Road. The 1945-1955 Zoning Regulations required that "each dwelling hereafter erected shall . . . have a width of not less than *fifty feet at the front building line*. The Zoning Commissioner's Policy Manual (ZCPM), Sections 400.1A and 400.2A, provides a determination of what constitutes the front yard on waterfront lots based on the orientation of the houses. In most cases, as is the situation here, waterfront lots refer to the front of the structure facing the water. The width of the lot in feet at the front of the building is 44.06 feet.

reviewing agency.

By way of background, the property known as 7404 Greenbank Road located in the Oliver Beach area of eastern Baltimore County was the subject of prior Case No. 06-520-A. In that case, the then owners, Paul Kozloski and Gail Huber, were denied approval to allow a lot width of 50 feet in lieu of the required 55 feet as this would have resulted in a 2 foot side yard setback variance for the adjacent property (7402 Greenbank). Notwithstanding the comments of Deputy Zoning Commissioner John V. Murphy with regard to zoning merger, I shall to the extent applicable here, adopt the findings and conclusions set forth in his Order, dated June 26, 2006, and incorporate them herein. Important to the case before me was the filing of an application by the prior Petitioners with the Development Review Committee (DRC). This resulted in approval of a lot line adjustment on March 5, 2007 (DRC No. 030507H). This approval removed the prior need for a 2-foot side yard setback on the adjacent lot (7402 Greenbank) and assured that the proposed house location (7404 Greenbank) would be compatible with the neighborhood and with the front to rear orientations of other homes in this waterfront community. I find the Office of Planning's February 20, 2009 ZAC comment instructive in this regard. It states in pertinent part:

“The Office of Planning has reviewed the above referenced case(s) and recommends approval of the requested relief. The Development Review Committee (DRC) granted a lot line adjustment as shown on petitioner’s exhibit on March 5, 2007 (DRC #030507H). The plan and house location are consistent with the DRC request. The DRC action was tantamount to resubdivision of the property.”

The Petitioners now come before me as the new owners of the subject property seeking relief as set forth above to allow them to build a one-story single-family waterfront home that will be 28' wide x 48' deep in dimension. *See* Petitioners' Exhibits 4A and 4B showing front and rear elevation drawings. Their lot is identified as Lot 17 of Oliver Beach, an older subdivision that was platted and recorded in the Land Records in 1940, prior to the first set of zoning regulations

in Baltimore County. As is often the case with older subdivisions, many of the lots are undersized and do not meet current area and width requirements. In this regard, the subject lot contains a gross area of 8,516 square feet, or 0.196 acres, more or less, zoned D.R.5.5, and is 55 feet wide at its southern boundary and 181 feet deep. In order to proceed with the proposed development, the requested variance relief is necessary. In support of the proposal, photographs of the subject property and adjacent lots were submitted show that most of the houses in this community were built on 50-foot wide lots. Moreover, the requested variance involving side yard setback requirements is from the common lot line with adjacent neighbors. These neighbors do not oppose a 6-foot side yard setback as the new home will be at a distance of 16 feet from their homes, thereby providing sufficient room on both sides of the proposed new and existing homes for emergency personnel to go to the water from the road, if necessary.

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. The lot meets the minimum area requirements of 6,000 square feet under the D.R.5.5 zoning regulations. The only deficiency is the lot width at the front building line, which in my opinion, was abrogated, when the old "A" Residence Zone was replaced by the Density Residential Zones which effectively deleted any reference to this dated regulation. The requested side yard setbacks for the proposed dwelling are similar to most of the houses in this community that were built on 50-foot wide lots.² In my view, the relief requested will not result in any detriment to the health, safety or general welfare of the surrounding locale and meets the spirit and intent of Section 307 for relief to be granted. However, given the property's close proximity to the Gunpowder River, the proposed development must comply with the Chesapeake Bay Critical Area (CBCA) regulations. Mr. Jones, who is intimately familiar with waterfront

² See prior Orders involving variance relief on Greenbank Road: 05-438-A – (7335); 05-439-A – (7337); 05-603-A – (7416 Chesapeake Road), and 05-604-A (7418 Chesapeake Road), which are just west of Greenbank Road.

construction, indicated that the flood protection elevation for this site is above 11.2 feet and indicated that he will be able to satisfy the ZAC comment received from the Bureau of Development Plans Review by submitting an elevation certificate. Approval is also conditioned on compliance with the regulations for protection of water quality, streams, wetlands and floodplains as set forth in the ZAC comment received from the Department of Environmental Protection and Resource Management (DEPRM).

The new evidence presented at the hearing demonstrated that a denial of the variance would render this lot unbuildable and have no real use. I find that the Petitioners should not be caused the practical difficulty of being denied the right to develop this lot under the circumstances. The case of *Belvoir Farms v. North*, 355 Md. 259 (1999) stands for the proposition that a variance may be granted in cases in which the hardship is less severe than the unconstitutional taking standard, that is, the zoning regulations result in a denial of all viable economic use of the property. The new standard given by the *Belvoir Farms Court* is “denial of reasonable and significant use of the property”. Based on the evidence presented at the hearing and considering the judicial standards established by the Courts, I find that the variance request meets the spirit and intent of the regulations and will not adversely affect the neighborhood. The proposed improvements on this site constitute a reasonable use of the property.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 25th day of February 2009 that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit side yard setbacks of 8 feet and a lot width of 44 feet (at the front building line) in lieu of the required 10 and 55

feet, respectively, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
2. Compliance with the ZAC comments made by the Bureau of Development Plans Review, dated January 6, 2009, a copy of which has been attached hereto and made a part hereof.
3. Compliance with the Chesapeake Bay Critical Area (CBCA) regulations as set forth in the ZAC comments submitted by DEPRM, dated January 30, 2009, a copy of which has been attached hereto and made a part hereof.
4. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

WJW:dlw

_____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County