

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
VARIANCE * DEPUTY ZONING
 N side of New Section Road, 360 feet E of *
 the c/l of South Seneca Road *
 15th Election District * COMMISSIONER
 5th Councilmanic District *
 (3912 New Section Road) * FOR BALTIMORE COUNTY

Kenneth and Lois Watkins * Case No. 2009-0178-SPHA
Petitioners *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the legal owners of the subject property, Kenneth and Lois Watkins. The Special Hearing request was filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a buildable lot with an area of 0.260 acre for a new dwelling. The Variance requests are from Sections 1A04.3.A, 1A04.3.B.1 and 1A04.3.B.2.b of the B.C.Z.R. to permit a proposed dwelling with a height of 40 feet in lieu of the required 35 feet, and side yards of 10 feet each in lieu of the required 50 feet on each side, respectively. 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 requested Special Hearing and Variance petitions were Petitioners Kenneth and Lois Watkins. Also appearing in support of the requested relief was Robert Infussi with Expedite LLC, the consultant who assisted Petitioners with filing the petitions, and David Billingsley with Central Drafting & Design, Inc., the firm that prepared the site plan. There were no Protestants or other interested citizens in attendance at the hearing.

Testimony and evidence presented revealed that the subject waterfront property is rectangular in shape and contains approximately 0.260 acre, more or less, zoned R.C.5. The property is located on the north side of New Section Road, east of Bowley's Quarters Road and with water frontage on Seneca Creek, in the Bowley's Quarters area of Baltimore County. The property is also known as Lot 307 and is currently unimproved. Like many waterfront lots in this area, the property is 50 feet wide. The property has a depth of approximately 225 feet.

Petitioners currently reside at 3910 New Cut Road, which is adjacent to the subject property and also known as Lot 306. A copy of the real property data search printout describing that property was marked and accepted into evidence as Petitioners' Exhibit 2. The Deeds that were marked and accepted into evidence as Petitioners' Exhibits 3A through 3D also illustrate the chain of title and indicate that Petitioner Kenneth Watkins, Jr. acquired Lot 306 in 1976, and that title to the property was transferred to Mr. Watkins and his wife, Petitioner Lois Watkins, in 1991. As to the subject property, this property -- again known as Lot 307 -- is also owned by Petitioners as indicated by the real property data search printout that was marked and accepted into evidence as Petitioners' Exhibit 4. Additional Deeds that were marked and accepted into evidence as Petitioners' Exhibits 5A through 5D illustrate the chain of title and also indicate that Petitioner Kenneth Watkins, Jr. acquired this property in 1976, and that title to the property was transferred to Mr. Watkins and his wife, Petitioner Lois Watkins, in 2005.

Petitioners desire to develop the subject property with the proposed construction of a three-story dwelling with a height of 40 feet and an approximate size of 30 feet wide by 55 feet deep, which would result in side yard setbacks of 10 feet. In order to do so, Petitioners are in need of zoning relief from the side yard setback requirements of 50 feet and the maximum height allowance of 35 feet for the R.C.5 Zone. Petitioners are also in need of special hearing relief in

order to gain approval of a lot size of 0.260 acre in the R.C.5 Zone where a minimum 1.5 acres is required.

In support of the requested relief, Mr. Billingsley proffered the testimony and indicated that the subject property was laid out as part of the “Second Addition to Plat No. 2, Bowleys Quarters” that was recorded on January 25, 1933. A copy of the record plat was marked and accepted into evidence as Petitioners’ Exhibit 6. As shown in the aerial photograph marked and accepted into evidence as Petitioners’ Exhibit 7, most of the surrounding lots in the subdivision are improved with a dwelling. Some still have the original homes built in the 1930’s or 40’s; others have had those homes razed in favor of newer, larger waterfront homes. Conspicuous is the subject property because it is the only lot shown in the aerial photograph depicting approximately 20 lots that is not presently improved. Mr. Billingsley also submitted several photographs that were marked and accepted into evidence as Petitioners’ Exhibits 8A through 8D depicting the subject property and the neighboring properties on each side. These neighboring properties are improved with modest sized dwellings that were built in 1944 (3910 New Section Road) and 1933 (3914 New Section Road), respectively.

The Zoning Advisory Committee (“ZAC”) comments were received and are made part of the record of this case. Comments were received from the Bureau of Development Plans Review dated January 13, 2009. The comments indicate that the first floor or basement must be at least one foot above the flood plain elevation in all construction, the building should be designed and adequately anchored to prevent flotation or collapse and constructed of materials resistant to flood damage. Flood-resistant construction should be in accordance with the Baltimore County Building Code which adopts the International Building Code. Comments were received from the Department of Environmental Protection and Resource Management (“DEPRM”) dated March

2, 2009 indicating that development of the property must comply with the Chesapeake Bay Critical Area Regulations. The property is also within a Limited Development Area (“LDA”) and Buffer Management Area (“BMA”) of the Chesapeake Bay Critical Area. All LDA and BMA requirements apply, including lot coverage requirements and 15% afforestation. Lot coverage is limited to 31.25% with mitigation for lot coverage over 25%.

This case presents an increasingly common set of circumstances before this Commission; namely, waterfront communities in eastern Baltimore County that are zoned R.C.5, but were platted and recorded decades ago -- certainly prior to the adoption of Zoning Regulations in these areas -- and thus do not meet the current zoning requirements for setbacks, lot widths, and minimum area. In addition, because these areas are within the floodplain, the base flood and flood protection elevations also make it increasingly difficult for property owners to replace aged, often dilapidated original structures that were relatively small and intended as summer cottages with new homes of sufficient size that are often used as a primary residences, yet still not exceed the maximum allowable height of 35 feet.

Thus, the task for this Commission is to review the purpose of the R.C.5 Zone and interpret that in the context of these waterfront properties. Section 1A04.1.B states that the R.C.5 zoning classification is established in order to: (1) provide for rural-residential development in suitable areas in which basic services are not anticipated, (2) eliminate scattered and generally disorderly patterns of future rural-residential development, (3) assure that encroachments onto productive or critical natural resource areas will be minimized, and (4) provide a minimum lot size which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems.

Turning now to the instant matter, as to the Special Hearing and Variance requests, I am persuaded to grant the requested relief. Although the subject property does not meet the minimum area requirement, nor the height and side yard setback limitations, in my view, this lot -- and others like it -- is clearly consistent with the purpose of the R.C.5 zoning classification, and therefore meets the spirit and intent of the Zoning Regulations. As to the concern over the provision of basic services and adequate area for on-site sewer and water systems, in this case the property does have access to existing public water and sewer services. As to the issue of scattered and generally disorderly patterns of future rural-residential development, that is also not impacted here. This property is a lot of record and has been in existence for over 75 years. As depicted in the record plat accepted into evidence as Petitioners' Exhibit 6, it was platted and recorded as part of a planned layout of waterfront properties in Bowleys Quarters. Regarding the encroachments onto productive or critical natural resource areas, this property is situated in the Chesapeake Bay Critical Area and is subject to stringent regulations at the State and local level, including lot coverage requirements, afforestation, and mitigation in environmentally sensitive areas. DEPRM's careful watch over these issues will minimize the potential impact of this development in those areas. For these reasons, I shall approve the property as a buildable lot for the proposed new dwelling.

I also find the property unique in a zoning sense in that the setback and height constraints cause the subject property to be disproportionately impacted by the Zoning Regulations as compared with other surrounding properties, making it virtually impossible for Petitioners to have any dwelling erected on their property. The property is only 50 feet wide and the setback for each side is 50 feet. Moreover, the base flood and flood protection elevation requirements almost automatically dictate that a proposed dwelling will begin with a 10 or 11 foot height

above ground level, leaving perhaps only 25 feet for the enclosed living areas of the dwelling height, including an adequate roof pitch.

Finally, I find that the setback and height variance requests can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered by Petitioners, I find that Petitioners' Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 27th day of March, 2009 that Petitioners' request for Special Hearing relief filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve a buildable lot with an area of 0.260 acre for a new dwelling be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioners' request for Variance from Sections 1A04.3.A, 1A04.3.B.1 and 1A04.3.B.2.b of the B.C.Z.R. to permit a proposed dwelling with a height of 40 feet in lieu of the required 35 feet, and side yards of 10 feet each in lieu of the required 50 feet on each side, respectively, be and are hereby GRANTED.

The granting of the relief herein shall be subject to the following:

1. Petitioners may apply for their 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. 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. The base flood elevation for this site is 10.2 feet Baltimore County Datum. The flood protection elevation for this site is 11.2 feet. In conformance with Federal Flood Insurance Requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.
 4. The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.
 5. The building engineer shall require a permit for this project. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
 6. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.
 7. Development of the 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).
 8. The property is within a Limited Development Area (“LDA”) and Buffer Management Area (“BMA”) of the Chesapeake Bay Critical Area. All LDA and BMA requirements apply, including lot coverage requirements and 15% afforestation. Lot coverage is limited to 31.25% with mitigation for lot coverage over 25%.

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