

IN RE: PETITION FOR VARIANCE

E side of Grave Run Road, 1930 feet N
of the c/l of Church Road
6th Election District
3rd Councilmanic District
(20017 Grave Run Road)

David and Judith Ann Horst
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **Case No. 2009-0179-A**

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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, David and Judith Ann Horst. Petitioners are requesting Variance relief from Section 32-4-409(e)(2) of the Baltimore County Code (B.C.C.) to permit a panhandle strip in an R.C.2 Zone of 1,500 feet +/- in lieu of the allowed 1,000 foot maximum specified in the Baltimore County Code. 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 were Petitioners David and Judith Ann Horst, their son, Zachary Horst, and their attorney, Howard Alderman, Jr., Esquire. Also appearing in support of the requested relief was Guy Ward with McKee & Associates, the firm that prepared the site plan. Appearing on behalf of the Baltimore County Department of Environmental Protection and Resource Management ("DEPRM") was Wallace S. Lippincott, Jr. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is an irregular-shaped property containing approximately 14.673 acres, more or less, split zoned R.C.2 (14.543 acres)

and R.C.8 (0.130 acre). The lower southeast corner of the property contains a very small sliver of land situated in the R.C.8 Zone. The property is located on the east side of Grave Run Road, south of Hoffmanville Road and north of Church Road, in the Hampstead area of northwest Baltimore County near the Carroll County line. The property is presently improved with Petitioners' existing two-story dwelling located at the easternmost side of the property.

Petitioners are currently proceeding through the minor subdivision process in order to subdivide the property and create a lot for their son, Zachary Horst. As shown on the site plan, Petitioners would retain a 2.789 acre area to be known as Lot 1 where their existing home is located. The remaining 11.884 acres would create Lot 2 for their son, with a dwelling to be constructed near the center of that lot, along with a proposed septic reserve area and well, as also shown on the site plan. As presently configured, Petitioners have access to their home from Grave Run Road via a private road known as Graves Road; however, as a result of the minor subdivision, Petitioners will no longer have frontage access from Grave Run Road. Thus, as part of the minor subdivision, Petitioners propose that their Lot 1 will have Graves Road as a panhandle strip running along the southern portion of the property from Grave Run Road to the existing dwelling -- with a length of approximately 1,500. Section 32-4-409(e)(2) of the B.C.C. states that in an R.C. Zone, the panhandle length may not exceed 1,000 feet. Section 32-4-409(e)(3) also states that the maximum permitted length of a panhandle is subject to variance under Section 307 of the B.C.Z.R.; hence the instant variance request.

In support of the requested relief, Mr. Alderman proffered that access to Petitioner's existing home would not change with the minor subdivision or the variance request. It would still be via the Graves Road private road. He also points out that there is no other practical alternative to keeping access for Petitioners' proposed Lot 1. Mr. Alderman also noted that there

would be a use-in-common agreement for the upkeep and maintenance of this private road, and Petitioners would comply with all applicable requirements concerning access for public works vehicles and emergency equipment in consultation with the Fire Marshal's Office.

In further support of the requested variance, Mr. Alderman indicated that the conditions which are the subject of the variance request, including Petitioners' home and the private Graves Road, are existing conditions. He also indicated that the properties in the area are very unique in size and shape, with the subject property being very long and narrow. He emphasized that there would be no increase in density stemming from the variance request. In addition, Mr. Alderman explained that the need for the variance is also driven by the agricultural use of the property and the desire to keep that use on one large lot -- to be in keeping with the R.C.2 Zone's agricultural use and appearance, and protection of prime and productive soils. Mr. Lippincott with DEPRM confirmed his agency's support of the variance in order to retain the larger proposed Lot 1 for agricultural uses and supplemented his statements at the hearing with a written comment that will be expounded upon later in this Order. Mr. Lippincott also indicated as a separate, but related issue, that DEPRM preferred that the proposed location of the well shown on the site plan as 35 feet from the property line to the north be moved at least 100 feet from the adjacent property, which is also used for agricultural operations. In response, Mr. Alderman indicated that Petitioners would attempt to comply with this request and had requested a well location variance from DEPRM to allow the proposed well area to be situated lower in elevation than the proposed septic reserve area. If this variance is granted, Petitioners would certainly comply with Mr. Lippincott's request.

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 February 19

2009 which states that it does not oppose the requested variance as it is for the existing driveway. The placement of the new dwelling on Lot 2 should be consistent with the comments provided by DEPRM. Comments were received from the Bureau of Development Plans Review dated January 14, 2009 which indicate that a 30 foot by 70 foot tee turn around is required for a panhandle driveway over 300 feet in length, the shared portion of the driveway shall be 15 feet paved width, and the driveway grade cannot exceed 14%. A revised comment dated March 4, 2009 was received from Mr. Lippincott with DEPRM indicating that the variance request is supported because the need for the variance for the panhandle length is due to the subdivision of a small lot from the larger parcel. This proposal meets DEPRM agricultural policies by retaining a larger lot for future agricultural uses. Mr. Lippincott also reiterates the concern regarding placement of the well and a request that the well be located 100 feet off the property line if this meets with other DEPRM policies.

Considering all the testimony and evidence presented, I 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 addition to the irregular long and narrow shape of the property and the existing conditions on the property that necessitate the variance, I find the DEPRM concern over preserving the agricultural use of the existing 11-plus acres to be the primary driver of the variance. Certainly, the desire to preserve existing and future productive agricultural uses in the R.C.2 Zone is well known and recognized by this Commission. In this case, permitting the 1,500 foot length for the panhandle strip for proposed Lot 1 allows proposed Lot 2 to remain as a larger, undisturbed agricultural area.

I also find that strict compliance with the zoning regulations of Baltimore County would result in practical difficulty and undue hardship. Petitioners would have no other practical

alternative to gain access to Lot 1 and might otherwise have to move the proposed lot line further west in order to shorten the panhandle strip to the required 1,000 feet, thereby cutting into the agricultural land. Finally, I find that this variance can be granted in strict harmony with the spirit and intent of the zoning regulations and in such a manner as to grant relief without injury to the public, health, safety or general welfare.

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 27th day of March, 2009 by this Deputy Zoning Commissioner, that Petitioners' Variance request from Section 32-4-409(e)(2) of the Baltimore County Code (B.C.C.) to permit a panhandle strip in an R.C.2 Zone of 1,500 feet +/- in lieu of the allowed 1,000 foot maximum as specified in the Baltimore County Code be and is 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. A 30 foot by 70 foot tee turn around is required for a panhandle driveway over 300 feet in length.
3. The shared portion of the driveway shall be 15 feet paved width and the driveway grade cannot exceed 14%.
4. Pursuant to the well location variance granted by DEPRM shortly after the hearing, the placement of the proposed well shall be located 100 feet off the property line. Prior to obtaining a building permit, a revised site plan must be submitted to DEPRM showing the new well area.

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