

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Pennsylvania Avenue, 140 feet W		
of c/l of Factory Avenue (AKA Railroad Avenue	*	DEPUTY ZONING
9 th Election District		
5 th Councilmanic District	*	COMMISSIONER
(441 A Pennsylvania Avenue)		
	*	FOR BALTIMORE COUNTY
NHS Baltimore, LLC		
<i>Petitioner</i>	*	CASE NO. 2009-0180-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 Sunny Luisa Cooper, Senior Project Manager, on behalf of the legal owner of the subject property, NHS Baltimore, LLC. Petitioner is requesting variance relief as follows:

- From Section 102.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the constuction of a dwelling on a lot with an area of 10,809 square feet that does not abut on a right-of-way at least 30 feet over which the public has an easement of travel, in lieu of the required 20,000 square feet; and
- From Section 1B02.3.C.1 to permit a rear yard setback of 35 feet in lieu of the 50 feet required in a D.R.10.5 Zone.

The subject property and requested relief are more fully depicted on the site plan which was prepared by H. Malmud & Associates, Inc. and marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests was Sunny Luisa Cooper, Senior Project Manager for Petitioner NHS Baltimore, LLC. Also appearing in support of the relief was Raymond Heil, Redevelopment Project Manager with the Baltimore

County Office of Community Conservation. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is irregular-shaped and contains approximately 0.248 acre, more or less, or 10,809 square feet, zoned D.R.10.5. The property is located approximately 100 feet north of Pennsylvania Avenue, west of Factory Avenue and on the east side of York Road, in the Historic East Towson area of Baltimore County. The property is currently unimproved, but has access to public sewer and water services and access from Pennsylvania Avenue via a private road that runs north from Pennsylvania Avenue along the eastern property line of the subject property.

Further evidence revealed that Petitioner is a non-profit organization that purchases distressed properties and renovates and rehabilitates the structures or constructs new homes on unimproved properties such as the subject property in order to give lower income families affordable opportunities at home ownership. Eligible families are normally at 80% or below the median family income for the State. Petitioner is familiar with the Towson area and is involved in several other projects in East Towson. In the instant matter, Petitioner acquired the subject property in 2007. As shown on the site plan as well as the aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 3, the property is unusual in that it is situated in an area of East Towson where considerable residential and commercial development has taken place near and around the property. The record plat marked and accepted into evidence as Petitioner's Exhibit 2 indicates the subject property has been held intact as a lot of record since November 5, 1928 as part of the "Subdivision of the Estate of Albert Wilson;" however, it has remained unimproved for the past 80 years. One issue that has perhaps hampered the property's

development is that it does not have direct frontal access from Pennsylvania Avenue. Access is by way of the existing private road that is 25 feet wide.

At this juncture, Petitioner, in partnership with the County's Office of Community Conservation, desires to improve the property with a two-story single-family dwelling. In order to do so, Petitioner is in need of variance relief to permit the construction of a dwelling on an undersized lot that does not have access to a right-of-way at least 30 feet wide over which the public has an easement of travel, and to permit the rear yard setback to be 35 feet rather than the minimum of 50 feet. Contained within the case file were elevation and floor plan drawings for the proposed dwelling. These were marked and accepted into evidence as Petitioner's Exhibit 4. The drawings illustrate an attractive two-story home with basement approximately 34 feet wide by 26 feet deep, with a wrap around porch along the front (north) and side (east) of the proposed dwelling. The home would have a living room, dining room, and kitchen on the first floor, with a bedroom and full bathroom on the main floor. On the second floor would be the master bedroom and master bathroom, with two additional bedrooms and a full bathroom. The basement would be unfinished with a laundry and utility area.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments received from the Office of Planning dated February 6, 2009 indicates that they have been working with Petitioner on an acceptable set of elevation drawings for the past several months. Despite the meetings, before the Office of Planning can grant final approval for this variance request Petitioner must submit a final rendition of the building elevation drawings. Petitioner must also have a letter of approval from the Community Association or Design Review Panel.

Considering of all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. Although the right-of-way upon which the subject property has access is a private road and is approximately 25 feet wide rather than the required 30 feet, it appears to me there are compelling circumstances for this situation that justify granting the variance relief. First, this lot was platted in 1928, far before the adoption of the Zoning Regulations. Moreover, in reviewing the record plat, it shows the subject right-of-way has been in existence as a 25 foot wide road since that time. To require the subject property as an undersized lot to comply with the requirement of a 30 foot width over which the public has an easement of travel would disproportionately impact the property as compared with others in the zoning district. I also find that the need for the rear setback variance of 35 feet rather than the required 50 feet is driven by the irregular shape of the lot, which pinches inward, and the orientation of the proposed dwelling, which is desired to be in keeping with the existing homes in the immediate area. As such, based on the above circumstances, I find that the property is unique in a zoning sense.

I further find that Petitioner would suffer undue prejudice and unreasonable hardship if the requested zoning relief were not granted. Petitioner would not be able to utilize the property for a permitted use, which also serves the public good of providing opportunities for affordable housing to lower income families. Finally, I find these 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.

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 30th day of March, 2009 by this Deputy Zoning Commissioner, that Petitioner's requests for Variance relief as follows:

- From Section 102.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the construction of a dwelling on a lot with an area of 10,809 square feet that does not abut on a right-of-way at least 30 feet over which the public has an easement of travel, in lieu of the required 20,000 square feet; and
- From Section 1B02.3.C.1 to permit a rear yard setback of 35 feet in lieu of the 50 feet required in a D.R.10.5 Zone

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

1. Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its 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. Petitioner must submit a final rendition of the building elevation drawings to the Office of Planning for review and approval prior to building permit issuance.
3. Petitioner must also have a letter of approval from the Community Association or Design Review Panel.

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