

IN RE: PETITIONS FOR VARIANCE	*	BEFORE THE
N/S Daisy Avenue, 250' & 300' W c/line of Pansy Avenue	*	ZONING COMMISSIONER
(2730 & 2732 Daisy Avenue)	*	OF
13 th Election District	*	BALTIMORE COUNTY
1 st Council District	*	
Margaret Mary Hanes, et al	*	Case Nos. 2009-0187-A &
Petitioners		2009-0188-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Variance filed by the legal owners of the subject properties, Margaret May Hanes, and her son, Charles Henry Hanes, III, for two (2) adjacent properties known as 2730 and 2732 Daisy Avenue. Since the properties are owned by related family members and are located adjacent to one another, the two cases were heard contemporaneously. In Case No. 2009-0187-A (2730 Daisy Avenue), the Petitioners request variance relief from Sections 1B02.3C.1, 303.1 and 304 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing dwelling with a lot width of 50 feet in lieu of the minimum required 55 feet; to permit a side yard set back of 8 feet in lieu of the required 10 feet, and to permit a front yard set back of 12 feet in lieu of the 24 foot set back required by front averaging. In Case No. 2009-0188-A (2732 Daisy Avenue), Petitioners request similar relief. Specifically, relief is requested from B.C.Z.R. Sections 1B02.C.1 and 304 to permit a proposed dwelling with a lot width of 50 feet in lieu of the minimum required width of 55 feet and to permit a proposed side set back of 7 feet in lieu of the required 10 feet. The subject properties and requested relief are more particularly described on the amended site plan(s) submitted in each case, which were accepted into evidence and respectively marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Margaret Hanes, and her son, Charles Hanes, property owners, and Cynthia K. Baxter, Professional Land Surveyor, with Carol Land Services, Inc. (CLSI), the engineering firm that prepared the site plan(s) for the properties. There were no Protestants or other interested persons present; however, it is to be noted that Dennis Wertz, from the Office of Planning, appeared and participated at the hearing.

Testimony and evidence offered revealed that the subject adjacent properties are each comprised of two (2) lots, 25' wide x 125' deep – 2730 *Daisy Avenue* (Lots 355 and 356) and 2732 *Daisy Avenue* (Lots 357 and 358) – forming rectangular-shaped parcels. The properties are located on the north side of Daisy Avenue, just west of Pansy Avenue, in the western area of the County known as Halethorpe. Each property contains a gross area of 0.143 acres and located within the subdivision of English Consul Estates, an older subdivision platted and recorded in the Land Records prior to 1945, thus prior to the first amended 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.

As noted, each of the subject lots contain an area of 6,250 square feet, are zoned D.R.5.5 and are 50 feet wide. Testimony indicated that Margaret Hanes's late husband, Charles H. Hanes, Sr., acquired the properties in the late 1940's, over sixty (60) years ago. They lived, and she still resides at 2730 Daisy Avenue in the two-story family home built in 1915. The adjacent parcel, which is identified as Lots 357 and 358 of English Consul Estate, was previously used as a side yard when Charles Hanes, III was growing up and is unimproved. The Petitioners propose to sell or develop that parcel with a single-family dwelling, for which variance relief is sought. Relief is requested in companion Case No. 2009-0187-A to legitimize the existing improvements that have existed thereon since 1915. As shown on the site plan, the existing house with its

enclosed front porch is located 12'-6" from the public right-of-way of Daisy Avenue and 8'-5" from the eastern property line adjoining Lot 357. Due to the fact that the subject properties have been owned in common ownership and now require variance relief in order to proceed, the Petitioners are not entitled to relief under Section 304 of the B.C.Z.R. That Section permits the owner of an undersized lot to build a single-family detached dwelling thereon without a public hearing if three (3) conditions are met. One of the conditions requires that the applicant not own any adjacent land. Further, the Zoning Commissioner's Policy Manual provides that such consideration be applied to ownership that occurred prior to six (6) years of the application. That is, relief is not afforded under Section 304 in that this lot and the adjacent property were under common ownership within the past six (6) years.

In any event, the Petitioners are entitled to relief under Section 307 of the B.C.Z.R. The Petitioners propose to develop the property (2732 Daisy Avenue) with a single-family dwelling. As shown on the site plan, a 29' x 40' dwelling envelope is proposed with a 13-foot side yard setback (west side) and 7-foot side yard (east side) will be provided. A common use driveway will run between the lots to the rear of the lots where sufficient parking is provided. No other variances are needed in that the proposed dwelling will meet front and rear yard setback requirements. Additionally, the lot is sufficiently sized from an area standpoint. Thus, variance relief is needed only as to the lot width and east side set back requirements. In this regard, Ms. Baxter indicated that many of the houses in this community are set out on 50-foot wide lots. Thus, she contends that the proposed development is consistent with the neighborhood. Moreover, the adjacent 25-foot wide Lot 359 owned by David Brown is vacant and unimproved. While he is not inclined to sell this lot to the Petitioners, it cannot be developed as the adjacent Lot 360 is improved with a large detached garage. Building elevation drawings of the proposed

dwelling will be submitted to the Office of Planning for review and approval to assure compatibility and consistency with the surrounding locale.

Based upon the testimony and evidence presented, I am persuaded to grant the requested relief. The most compelling factor in this case is that the subject lots were laid out and platted well prior to the adoption of zoning regulations in Baltimore County. As noted on the aerial photograph (*See* Petitioners' Exhibit 2), many of the houses in the community were built on double lots. Mr. Wertz confirms that the proposal "would not be inconsistent with the development pattern along this road. Approximately one-half of the single-family dwellings on Daisy Avenue (between Tulip Avenue and Annapolis Road) are constructed on two (2) 25-foot wide platted lots".¹ Thus, it appears that the relief requested is appropriate and consistent with the neighborhood. Testimony offered in support of the requests was that without variance relief, the lot (2732 Daisy Avenue), which has been taxed separately since the 1950's, could not be developed. Obviously, strict compliance with the regulations would create a hardship as the zoning regulations result in a denial of a reasonable and sufficient use of the property. *See Belvoir Farms v. North* 355 Md. 259 (1997). Moreover, I find that the proposed development will not result in any increase in density and that the uncontradicted evidence clearly establishes that there has never been a desire to combine or merge the several parcels (Lots 355-356 – Tax Account No. 1308001540 with Lots 357-358 – Tax Account No. 1308001541).

Pursuant to the advertisement, posting of the properties and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 24th day of March 2009, that the Petition for Variance filed in Case No. 2009-0187-A, seeking

¹ *See* Orders issued by this Commission on similar facts granting relief in this community: 89-216-SPHA (10 Clyde Avenue, 87-369-A (Baltimore Avenue), 87-83-A (Baltimore Avenue), 07-054-SPHA (Halethorpe Terrace), 08-141-SPHA & 08-142-SPHA (Clyde Avenue & Hammonds Ferry Road).

relief from Sections 1B02.3C.1, 303.1 and 304 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing dwelling on a lot with a width of 50 feet in lieu of the minimum required 55 feet; to permit a side yard set back of 8 feet (east side) in lieu of the required 10 feet, and to permit a front yard set back of 12 feet in lieu of the required average of 24 foot, for the existing dwelling known as 2730 Daisy Avenue, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, and

IT IS FURTHER ORDERED that the Petition for Variance filed in Case No. 2009-0188-A, seeking relief from Sections 1B02.C.1 and 304 of the B.C.Z.R. to permit a proposed dwelling, to be known as 2732 Daisy Avenue, with a lot width of 50 feet in lieu of the minimum required 55 feet and to permit a proposed side set back of 7 feet (east side) in lieu of the minimum required 10 feet, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED; subject to the following conditions:

1. The Petitioner(s) 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. Prior to the issuance of any permits, the Petitioner(s) or owner(s) of Lots 357 and 358, to be known as 2732 Daisy Avenue, shall submit building elevation drawings of the proposed dwelling to the Office of Planning for review and approval to ensure that the proposed house is compatible with existing homes in the area.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
of Baltimore County