

IN RE: PETITION FOR VARIANCE
E side of Leslie Road, 30 feet S of
Leslie Road
15th Election District
6th Councilmanic District
(6868 Leslie Road)

**Linda Harrington, Dawn Lichty and
Carolyn Rasmussen**
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
*
* **Case No. 2009-0195-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, Linda Harrington, Dawn Lichty and Carolyn Rasmussen. Petitioners are requesting Variance relief from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 19 feet in lieu of the required 35 feet for a replacement dwelling on existing lots on record. 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 was Petitioner Carolyn Rasmussen and her husband, Richard Rasmussen, and Petitioner Linda Harrington. Also appearing in support of the requested relief was Robert Infussi with Expedite LLC, the land use consultant assisting Petitioners, and David Billingsley with Central Drafting & Design, Inc., the firm that prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is rectangular in shape and contains 20,200 square feet or 0.464 acre, more or less, zoned R.C.2. This waterfront

property fronts Railroad Creek and is located on the east side of Leslie Road, east of Earls Beach Road and north of Ebenezer Road in the Middle River area of Baltimore County. The property is comprised of Lots 9 and 10 from the Plat of "Earl" subdivision and is presently improved with an existing building consisting of a two car garage on the ground floor and a living area on the second floor. The property is also improved with an existing carport structure and shed.

Petitioners indicated that the subject property has been in their family for many years. Petitioners' parents, James and Madeline Robley acquired Lots 1 through 11 of the "Earl" subdivision in 1956. A copy of said deed was marked and accepted into evidence as Petitioners' Exhibit 3A. A Life Estate Deed was created in 1961, wherein the properties were left to Ms. Robley's children upon her death. A copy of said Life Estate Deed was marked and accepted into evidence as Petitioners' Exhibit 3C. Over the years, most of the 11 lots were sold and developed. Ms. Robley died in 2004 and Petitioners have owned the subject property and adjacent Lot 11 since that time. Petitioners' father currently resides in the house on Lot 11. In order to care for their father and provide support for him, Petitioners' desire is to raze the existing house on the subject property, as well as the carport and shed, and construct a replacement dwelling. The existing dwelling was built in 1947 and was damaged following Hurricane Isabel in 2003. Photographs of the existing dwelling were marked and accepted into evidence as Petitioners' Exhibits 6A through 6D. It is also planned that Petitioner Carolyn Rasmussen and her husband, Richard Rasmussen, would live there permanently.

In support of the variance request, Mr. Billingsley proffered that the property is unusual in that it is much smaller than other nearby lots. This is evident on the record plat which was marked and accepted into evidence as Petitioners' Exhibit 4. The adjacent lot to the north, Lot 11, is approximately twice as large as the subject property. Properties to the south are similar,

but are much deeper than the subject property. As shown on the record plat, the layout of the property predates the Zoning Regulations. The plat indicates the "Earl" subdivision was recorded in 1924. Mr. Billingsley also pointed out that Petitioners are requesting variance relief from only the side yard setback at the north side of the property for the proposed new dwelling. The rear yard and front yard setbacks, and the 35 foot side yard setback at the south side of the property, will all be met. In addition, the current 19 foot side yard setback at the north side of the property will be maintained; hence, there will be no change -- and in particular -- no decrease in the setback distance from the existing dwelling to the proposed new dwelling. It is also important to note that environmentally, the new dwelling would upgrade the property in that it would be placed closer to Leslie Road, further away from the existing 100 year flood zone. Moreover, the other existing structures such as the carport and shed will be removed, providing a more appealing view of the property.

Finally, Petitioners submitted letters of support from adjacent neighbors that were marked and accepted into evidence as Petitioners Exhibits 7A and 7B. These letters, from Mike and Lois Panzer of 6860 Leslie Road and George Shekells of 6872 Leslie Road, respectively, indicate they are not opposed to Petitioners' plans for a new dwelling on the site.

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 February 4, 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 dated March 24, 2009 which indicates that the property must comply with the Chesapeake Bay Critical Area regulations. This property is within a Limited Development Area (LDA) and a Buffer Management Area (BMA) of the Chesapeake Bay Critical Area and must meet all LDA and BMA requirements, including 15% afforestation and lot coverage limits. The property is 20,200 square feet and therefore is limited to 31.25% lot coverage (6,312.5 square feet) with mitigation. In addition, all development within the 100 foot buffer must meet all BMA provisions.

Based on the testimony and evidence presented, I am persuaded to grant the variance relief. The property is 100 feet wide, but because of the R.C.2 Zoning, the side yard setbacks are 35 feet which allows for a house width of only 30 feet; however, because the depth of the property is only about 200 feet, it more lends itself to a dwelling that is wider with not as much depth, as opposed to a “thinner” dwelling that is considerably deeper than it is wide. It is also noteworthy that the property was platted in 1924, far prior to the adoption of the Zoning Regulations. Hence, in my view, the imposition of zoning on the property disproportionately impacts the subject property as compared with others in the area. Further, the effect of the 19 foot side yard setback will be very benign in my judgment because it will be the same as what exists presently, and will not be detrimental to the health, safety or general welfare of the community.

I also find that strict compliance with the zoning regulations of Baltimore County would result in practical difficulty and undue hardship. Petitioners would not be unable to construct a new dwelling and raze the existing 62 year old hurricane-damaged house. 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 or detrimental impact to adjacent properties or the surrounding locale.

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 request should be granted.

THEREFORE, IT IS ORDERED this 25th day of March, 2009 by this Deputy Zoning Commissioner, that Petitioners' Variance request from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 19 feet in lieu of the required 35 feet for a replacement dwelling on existing lots of record 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. The base flood elevation for this site is 10.2 feet Baltimore County Datum.
3. The flood protection elevation for this site is 11.2 feet.
4. 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.
5. 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.
6. The building engineer shall require a permit for this project.
7. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.

8. Flood-resistant construction shall be in accordance with the Baltimore County Building Code.
9. Development of this 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).
10. This property is within a Limited Development Area (LDA) and a Buffer Management Area (BMA) of the Chesapeake Bay Critical Area and must meet all LDA and BMA requirements, including 15% afforestation and lot coverage limits. The property is 20,200 square feet and therefore is limited to 31.25% lot coverage (6,312.5 square feet) with mitigation. In addition, all development within the 100 foot buffer must meet all BMA provisions.

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