

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
N side of Bowleys Quarters Road, 1000 ft		
SW side of the c/l of Burke Road	*	DEPUTY ZONING
15 th Election District		
6 th Councilmanic District	*	COMMISSIONER
(1636 Bowleys Quarters Road)		
	*	FOR BALTIMORE COUNTY
Scott L. Simmons		
<i>Petitioner</i>	*	CASE NO. 2009-0204-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Scott L. Simmons, the legal property owner. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 1.276 acres of R.C.5 zoned land for the construction of a dwelling in lieu of the minimum required 1.5 acres. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1. It should also be noted that Resolution 7-09 concerning the public disclosure of Scott L. Simmons, an employee of the Baltimore County Sheriff’s Office, was approved at the County Council meeting held on February 2, 2009.

Appearing at the requisite public hearing in support of the requested special hearing was Petitioner Scott Simmons, along with his wife Charlene Simmons. Also appearing in support of the requested relief was Charles Merritt with Merritt Development Consultants, Inc. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is predominantly square-shaped consisting of approximately 55,582 square feet or 1.276 acres, more or less, zoned R.C.5. The property is located on the northwest side of Bowleys Quarters Road, north of Chesapeake Road, in the Bowleys Quarters area of eastern Baltimore County. In particular, the property is situated toward the end of Bowleys Quarters Road on a peninsula that is bordered by Galloway

Creek to the northwest, Middle River to the southwest, and Chesapeake Bay to the south and east. The property also lies adjacent to Bowleys Quarters Condo-Marina.

As shown on the site plan and the zoning map that was marked and accepted into evidence as Petitioner's Exhibit 2, the subject property consists of five lots -- Lots 108 – 112. Each lot is approximately 50 feet wide by 230 feet deep. The property has been in Petitioner's family for a number of years, having been owned by Petitioner's grandfather and great-grandfather since the 1930's. Copies of the Deeds evidencing the chain of title were marked and accepted into evidence as Petitioner's Exhibits 5A through 5C. In 2007, in anticipation of acquiring ownership of the property and with the goal of ultimately constructing a single-family dwelling, Petitioner requested a Critical Area Administrative Variance from the Department of Environmental Protection and Resource Management (DEPRM) because the lots contain non-tidal wetlands. In a letter dated October 5, 2007, a copy of which was marked and accepted into evidence as Petitioner's Exhibit 3, DEPRM granted the variance. Petitioner acquired the property in May 2008 and countersigned the letter on June 11, 2008, acknowledging his agreement with the conditions imposed in the letter granting the Critical Area Variance. The property itself is part of "Plat No. 3 of Bowleys Quarters" and was recorded on April 25, 1930, as shown on the recorded plat that was marked and accepted into evidence as Petitioner's Exhibit 4.

At this juncture, Petitioner desires to put his plans into fruition with the construction of a single-family dwelling on the property. However, before doing so, Petitioner was informed by the Zoning Review Office that he would require special hearing relief for the undersized lot.

The Zoning Advisory Committee comments were received and are made part of the record of this case. Comments received from the Office of Planning dated March 4, 2009 do not oppose Petitioners' request, provided the construction complies with the current R.C.5 requirements. In order to make this determination, the Office of Planning will require the submission of additional information, which will be expounded on further in this Order. Comments were received from the Bureau of Development Plans Review dated February 18, 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 also received from DEPRM dated March 27, 2009 which indicates that the property must comply with the Chesapeake Bay Critical Area Regulations. The property is within a Limited Development Area (LDA) of the Chesapeake Bay Critical Area. Lot coverage is limited to 15%. The comment also references the Critical Area Variance that was granted to impact non-tidal wetlands and non-tidal wetlands buffer with mitigation required. Mitigation has also been provided for forest clearing in the critical area.

Section 1A04.3.B.1.a of the B.C.Z.R. states that “[a] lot having an area of less than 1 ½ acres may not be created in an R.C.5 Zone.” Section 1A04.3.B.1.b(1) of the B.C.Z.R. also states that “[t]he owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003, but does not meet the minimum acreage requirement ... may apply for a special hearing under Article 5 to alter the minimum lot size requirement.”

In the instant matter, I am persuaded to grant the special hearing relief. Arguably, the requested relief is not even necessary because under Section 1A04.3.B.1.a of the B.C.Z.R., Petitioner has not *created* a lot having an area of less than 1 ½ acres in an R.C.5 Zone. Indeed, in this case, the lots were recorded in 1930 and have existed in their present configuration as one property since at least 1961 (*See*, Petitioner’s Exhibit 5C). The existence of this property certainly predates the adoption of the R.C.5 Zone in this area, and the granting of the Critical Area Variance by DEPRM enables Petitioner to finally build on this property. On the other hand, under Section 1A04.3.B.1.b(1) of the B.C.Z.R., this property is not a subdivision as that term is generally used today and has been in existence prior to September 2, 2003, but may not meet the minimum acreage requirement by approximately 0.224 acre. In my view, based on the testimony and evidence presented, special hearing relief is warranted in this case to alter the minimum lot size requirement.

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 request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 5th day of May, 2009 that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 1.276 acres of R.C.5 zoned land for the construction of a dwelling in lieu of the minimum required 1.5 acres be and is hereby GRANTED, subject to the following:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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. 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 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), consistent with the Critical Area Variance granted October 5, 2007, and related conditions imposed therein.

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