

IN RE: PETITION FOR VARIANCE

W side of Bay Drive, 113 feet N of the
c/l intersection of Bay Drive
15th Election District
6th Councilmanic District
(3518 Bay Drive)

Michael Hawk
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **CASE NO. 2009-0210-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 owner of the subject property, Michael Hawk. Petitioner is requesting variance relief as follows:

- To allow 10 foot side yard setbacks in lieu of the required 50 foot side yard setbacks in an R.C.5 Zone pursuant to Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) and;
- To allow 17% building coverage in lieu of the required 15% building coverage in an R.C.5 Zone pursuant to Section 1A04.3.B.3 of the B.C.Z.R. and;
- To allow an undersized lot of 0.307 acre in lieu of the required 1.5 acres of land in an R.C.5 Zone pursuant to Section 1A04.3.B.1.a of the B.C.Z.R. and;
- To allow a 38 foot building height in lieu of the required 35 foot building height in an R.C.5 Zone pursuant to Section 1A04.3.A of the B.C.Z.R.

The subject property and requested relief are more fully depicted on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests was Petitioner Michael Hawk, as well as William N. Bafitis with Bafitis & Associates, Inc., the professional engineer who prepared the site plan. There were no Protestants or other interested citizens in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is rectangular in shape and consists of approximately 13,255 square feet or 0.304 acre, more or less, zoned R.C.5. The property is approximately 50 feet wide by 260 feet deep, with an uneven distance along the shoreline. This waterfront property is located at the terminus of Bay Drive, immediately adjacent to the Bowleys Quarters Condo-Marina located just to the north, and fronting on Middle River to the west, in the Bowleys Quarters area of Baltimore County. The property is presently improved with an existing two-story brick and siding dwelling and deck, as well as a two-story brick and siding garage.

Petitioner acquired the property in 2004 and has resided there since that time. According to SDAT property tax records, the dwelling was built in 1929 and is known as Lot 2 as part of "Plat No. 3 of Bowleys Quarters" that was recorded on April 25, 1930, as shown on the recorded plat that was marked and accepted into evidence as Petitioner's Exhibit 5. At this juncture, Petitioner desires to raze the existing home and replace it with a new dwelling. He also wishes to retain the existing garage. In order to do so, Petitioner is in need of the instant zoning relief from the height, area, building coverage, and setback restrictions that exist in the R.C.5 Zone.

In support of the variance requests, Petitioner submitted photographs of the property and the existing dwelling, which were marked and accepted into evidence as Petitioner's Exhibits 3A through 3K. Petitioner explained that, although the photographs seem to indicate the dwelling is in good shape, the pictures can be -- and indeed are -- deceiving in this case. Since Petitioner purchased the property, he has dealt with a number of structural issues concerning the home. The home was originally built in 1929 as the typical "shore shack" and has increased in size over the years with additions. The home appears on the outside to be an attractive home, but on the inside, there are problems. Petitioner indicated that much of the foundation is unstable and parts of the

structural floor areas are rotted. In addition, Petitioner has noticed that the height of some walls is uneven inside the home, going beyond mere settling.

As a result of these problems, Petitioner hired a structural engineer to look at the home and a soils engineer to observe the property's sub-surface characteristics. As a result of these analyses, the engineers came up with a plan to reinforce the home's foundation and to strengthen the walls to adequately hold up the second floor. Several contractors reviewed the engineers' plan and the average price to perform the work was in excess of \$150,000. However, Petitioner indicated he realized that these fixes might not be the end of his problems with the home and that other issues would likely crop up in the future, with more "good" money being spent after "bad." Hence, Petitioner desires to "start over" and construct a new home with today's materials and workmanship. Unfortunately for Petitioner, this endeavor also involves compliance with today's R.C.5 zoning requirements.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comment received from the Office of Planning dated March 4, 2009 indicates it does not oppose Petitioner's request, provided the construction complies with the current R.C.5 performance standards. 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 Department of Environmental Protection and Resource Management (DEPRM) dated April 3, 2009 which indicates that the property must comply with the Chesapeake Bay Critical Area (CBCA) Regulations, and that the property is within the CBCA and is designated a Limited Development Area (LDA) and Buffer Management Area (BMA). Lot coverage is limited to 31.25% with mitigation and the 15% afforestation requirement must be met. In addition, any development within the 100 foot buffer must meet all BMA provisions. Comments were also 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.

This case presents an increasingly common set of circumstances before this Commission; namely, waterfront properties in eastern Baltimore County that are zoned R.C.5, but were platted and recorded decades ago -- certainly prior to the adoption of Zoning Regulations in these areas -- and thus do not meet the current zoning requirements for setbacks, minimum area, and building coverage. In addition, because these areas are within the floodplain, the base flood and flood protection elevations also make it increasingly difficult for property owners to replace aged, often dilapidated original structures that were relatively small and intended as summer cottages with new homes of sufficient size that are often used as a primary residences, yet still not exceed the maximum allowable height of 35 feet.

Thus, the task for this Commission is to review the purpose of the R.C.5 Zone and interpret that in the context of these waterfront properties. Section 1A04.1.B states that the R.C.5 zoning classification is established in order to: (1) provide for rural-residential development in suitable areas in which basic services are not anticipated, (2) eliminate scattered and generally disorderly patterns of future rural-residential development, (3) assure that encroachments onto productive or critical natural resource areas will be minimized, and (4) provide a minimum lot size which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems.

Turning now to the instant matter, I am persuaded to grant the requested relief. Although the subject property does not meet the minimum lot area requirement of 1½ acres, nor the height and side yard setback limitations, in my view, this lot -- and others like it -- is clearly consistent with the

purpose of the R.C.5 zoning classification, and therefore meets the spirit and intent of the Zoning Regulations. As to the concern over the provision of basic services and adequate area for on-site sewer and water systems, in this case the property does have access to existing public water and sewer services. As to the issue of scattered and generally disorderly patterns of future rural-residential development, that is also not impacted here. This property is a lot of record and has been in existence for almost 80 years. As depicted in the record plat accepted into evidence as Petitioners' Exhibit 5, it was platted and recorded as part of a planned layout of waterfront properties in Bowleys Quarters. Regarding the encroachments onto productive or critical natural resource areas, this property is situated in the Chesapeake Bay Critical Area and is subject to stringent regulations at the State and local level, including lot coverage requirements, afforestation, and mitigation in environmentally sensitive areas. DEPRM's careful watch over these issues will minimize the potential impact of this development in those areas. In addition, it is noteworthy that the existing home currently has a building coverage of 18%; however, with the proposed new dwelling, lot coverage will actually be reduced to 17%.

I also find the property unique in a zoning sense in that the setback and height constraints cause the subject property to be disproportionately impacted by the Zoning Regulations as compared with other surrounding properties, making it virtually impossible for Petitioner to have any dwelling erected on the property. The property is only 50 feet wide and the setback for each side is 50 feet. Moreover, the base flood and flood protection elevation requirements almost automatically dictate that a proposed dwelling will begin with a 10 or 11 foot height above ground level, leaving perhaps only 25 feet for the enclosed living areas of the dwelling height, including an adequate roof pitch.

Finally, I find that the variance requests can be granted in strict harmony with the spirit and intent of said regulations, and in such a 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 amended 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 7th day of May, 2009 by this Deputy Zoning Commissioner, that Petitioner's Variance requests as follows:

- To allow 10 foot side yard setbacks in lieu of the required 50 foot side yard setbacks in an R.C.5 Zone pursuant to Section 1A04.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) and;
- To allow 17% building coverage in lieu of the required 15% building coverage in an R.C.5 Zone pursuant to Section 1A04.3.B.3 of the B.C.Z.R. and;
- To allow an undersized lot of 0.307 acre in lieu of the required 1.5 acres of land in an R.C.5 Zone pursuant to Section 1A04.3.B.1.a of the B.C.Z.R. and;
- To allow a 38 foot building height in lieu of the required 35 foot building height in an R.C.5 Zone pursuant to Section 1A04.3.A of the B.C.Z.R.

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

1. Petitioner may apply for his building permit 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

- 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. 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).
 4. The property is within the CBCA and is designated a Limited Development Area (LDA) and Buffer Management Area (BMA). Lot coverage is limited to 31.25% with mitigation and the 15% afforestation requirement must be met. In addition, any development within the 100 foot buffer must meet all BMA provisions.
 5. 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.
 6. 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.
 7. 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.
 8. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.

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