

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NW corner of Lincoln Drive and Dunbar		
Avenue, 34 feet N of the c/l of Lincoln Place	*	DEPUTY ZONING
1 st Election District		
1 st Councilmanic District	*	COMMISSIONER
(16 Dunbar Avenue)		
	*	FOR BALTIMORE COUNTY
Earl Kidwell		
<i>Property Owner</i>	*	
Morgan C. Kelly		
<i>Contract Purchaser</i>	*	CASE NO. 2009-0212-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 the legal owner of the subject property, Earl Kidwell, and the contract purchaser and proposed developer of the property, Morgan C. Kelly (hereinafter “Petitioners”). Variance relief is requested from Sections 1B02.3.A.5 and 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the construction of a dwelling on a lot width of 50 feet, area of 5,600 square feet, a side yard setback of 8 feet, and a setback to a public street right-of-way of 16 feet in lieu of the required 55 feet, 6,000 square feet, 10 feet and 25 feet, respectively. The subject property and requested relief are more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests on behalf of Petitioners Earl Kidwell and Morgan C. Kelly was Michael Cassell. Mr. Cassell is a real estate broker and appraiser and is Petitioners’ real estate consultant in this matter. Appearing as a Protestant opposed to the requested relief was Rose Bacon of 14 Dunbar Avenue. There were no other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is rectangular in shape and contains 5,600 square feet, more or less, zoned D.R.5.5. The property is located on the west side of Dunbar Avenue at the corner of its intersection with Lincoln Place to the south. The property is situated west of Interstate 695 and south of Baltimore National Pike (U.S. 40) in the Catonsville area of Baltimore County. The location was also confirmed on the zoning map that was marked and accepted into evidence as Petitioners' Exhibit 2. Presently, the property is unimproved and sits as a vacant lot.

As indicated in the Deed that was marked and accepted into evidence as Petitioners' Exhibit 3, the property was acquired by Earl Kidwell in 1974 from Alice Kidwell. The property consists of Lots 19 and 20 of Section "B" of the subdivision known as Lincoln Park. Photographs of the property were marked and accepted into evidence as Petitioners' Exhibits 5A through 5C. As also indicated on the Deed, the property was previously granted to James and Alice Kidwell in 1946. At this juncture, Petitioners desire to develop the property and construct a two-story single-family dwelling. Architectural renderings and elevation drawings were marked and accepted into evidence as Petitioners' Exhibit 4 and show a home measuring approximately 26 feet wide by 35 feet deep with a one car garage. In order to do so, Petitioners are in need of the instant variance relief.

In support of the variance requests, Mr. Cassell explained that the subject property is an established lot of record that is part of an existing subdivision that was platted at least prior to 1946 according to the Deed. The dwellings along Dunbar Avenue are a mix of homes that were constructed as early as 1920, with a number of homes being constructed in the late 1940's and early 1950's, and additional in-fill development in this area occurring sporadically over the next 50 years, culminating with homes built as recently as 2004. Mr. Cassell also pointed out that,

although the owner has attempted to maintain the property over the years, the property is often used by persons in the area as a dumping ground. There is trash and debris including abandoned tires and outdoor chairs strewn about the rear of the property, as shown on the photographs that were marked and accepted into evidence as Petitioners' Exhibits 6A through 6D. By developing the property and constructing an attractive residence, Petitioners believe that the property can be utilized for its highest and most beneficial use, while also making the property a productive part of the neighborhood.

Testifying in opposition to the requested relief was Rose Bacon of 14 Dunbar Avenue. Ms. Dunbar lives adjacent to the subject property to the immediate north. She has lived in her home for approximately 21 years and does not want to have a home right next door to her property. She would rather maintain her privacy without another dwelling so close nearby. Ms. Bacon also complained that she has had to call the County on a number of occasions due to trash and tall grass on the subject property.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated April 9, 2009 indicating that there appear to be several existing undersized lots in the neighborhood, and that the Planning Office does not oppose Petitioners' request. The Office recommends that Petitioner submit building elevations for review and approval prior to issuance of any building permit, and that the dwelling be compatible in size, materials, color and architectural detail as that of the existing dwellings in the area. Petitioner should also provide photographs of adjacent and nearby dwellings to the Planning Office for review, and should provide landscaping along the public road.

Considering all the testimony and evidence presented, I am persuaded to grant the variance requests. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. The subject property has been a recorded lot of record for at least the past 60 years, with a number of homes in the area over 80 years old. In addition, a number of homes have been built in this area over the last 20 years, suggesting preferred in-fill development that utilizes existing public utilities and services.

I further find that the variance requests can be granted in strict harmony with the spirit and intent of the B.C.Z.R., and in such a manner as to grant relief without injury to the public health, safety and general welfare. Indeed, this development would result in a new home being built in this community with a marked aesthetic improvement over its current use as a dumping ground.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioners variance requests should be granted.

THEREFORE, IT IS ORDERED this 10th day of June, 2009 by this Deputy Zoning Commissioner, that Petitioners' Variance requests from Sections 1B02.3.A.5 and 1B02.3.B of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit the construction of a dwelling on a lot width of 50 feet, area of 5,600 square feet, a side yard setback of 8 feet, and a setback to a public street right-of-way of 16 feet in lieu of the required 55 feet, 6,000 square feet, 10 feet and 25 feet, respectively, be and are hereby GRANTED. The following shall be conditions precedent to the relief granted herein:

1. Petitioners may apply for their building permit 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,

2. Petitioners shall submit building elevations to the Office of Planning for review and approval prior to the issuance of any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color and architectural detail as that of the existing dwellings in the area.
3. Petitioners shall provide photographs of adjacent and nearby dwellings to the Office of Planning so that the above-mentioned condition can be evaluated.
4. Petitioners shall provide landscaping along the public road.

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