

**IN RE: PETITION FOR VARIANCE** \* BEFORE THE  
 N side of Cove Road, 145 feet E of \*  
 the c/l of Lodge Forest Drive \* DEPUTY ZONING  
 15<sup>th</sup> Election District \*  
 7<sup>th</sup> Councilmanic District \* COMMISSIONER  
 (7704 South Cove Road) \*  
 \* FOR BALTIMORE COUNTY  
**Herbert and Melie Oliver** \*  
*Petitioners* \* **Case No. 2009-0216-A**

\* \* \* \* \*

**IN RE: PETITION FOR VARIANCE** \* BEFORE THE  
 N side of South Cove Road, 20 feet E of \*  
 the c/l of Lodge Forest Drive \* DEPUTY ZONING  
 15<sup>th</sup> Election District \*  
 7<sup>th</sup> Councilmanic District \* COMMISSIONER  
 (7702 South Cove Road) \*  
 \* FOR BALTIMORE COUNTY  
**Herbert and Melie Oliver** \*  
*Petitioners* \* **Case No. 2009-0217-A**

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

These matters come before this Deputy Zoning Commissioner for consideration of Petitions for Variance and Special Hearing filed by the owners of the subject properties, Herbert and Melie Oliver. In each case number, Petitioner is requesting the following relief:

**Case No. 2009-0216-A:** For the property located at proposed 7704 South Cove Road, the Variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a 10 foot rear yard setback in lieu of the required 30 foot setback.

**Case No. 2009-0217-A:** For the property located at 7702 South Cove Road, the Variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning regulations (B.C.Z.R.) to amend the Variance granted in Case No. 1979-0241-A to allow a side yard setback of 5 feet in lieu of the required 10 feet. The subject properties and the requested relief are more fully

described on the site plans which were marked and accepted into evidence as Petitioners' Exhibits 1A (proposed 7704 South Cove Road) and 1B (7702 South Cove Road), respectively.

Appearing at the requisite public hearing in support of the Variance requests were Petitioners Herbert and Melie Oliver. Also appearing in support of the requested relief was Pattianne Smith, Petitioners' land use consultant and professional land surveyor with L.L.S. Land Services, Inc., who prepared the site plans. 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 consists of approximately 15,000 square feet or 0.344 acre, more or less, zoned D.R.5.5. As depicted on the site plans, the property is located at the northeast corner of South Cove Road and Lodge Forest Drive, west of North Point State Park and north of Old Road Bay in the Edgemere area of southeastern Baltimore County. The property is improved with Petitioners' existing two-story single-family dwelling that fronts South Cove Road and an attached two car garage. There is also a small shed located in the rear of the property. The dwelling is placed on the western side of the lot, with an existing side yard setback on the Lodge Forest Drive side of 28 feet. The other side yard setback is approximately 90 feet, with a front yard setback of 25 feet.

The "Plat of Lodge Forest" was recorded in October 1976. The subject property is known as Lot 755 of that subdivision. Petitioners have owned the subject property since January 1979 and have resided at the location since their home was built in 1980. In order to build their home, and due to the relative narrowness of this corner lot, Petitioners requested and were granted variance relief to permit a 10 foot rear yard setback in lieu of the required 30 feet, and a distance from the center line of South Cove Road of 48 feet in lieu of the required 50 feet. A copy of the May 1, 1979 Order was marked and accepted into evidence as Petitioners' Exhibit 2.

As a result of the configuration of the lot and the placement of the home as shown on the site plans, Petitioners have a very small rear yard with very little depth; however, there is a relatively large area in the side yard on the east side of the property that is unimproved. Photographs of the property, including Petitioner's home and the area of the proposed new lot, were marked and accepted into evidence as Petitioners' Exhibits 3A through 3F. As a result, Petitioners desire to subdivide this east side of their property and create proposed Lot 755B with an address of 7704 South Cove Road, and rename their lot as Lot 755A. As the site plans detail, this would result in two separate, more square-shaped lots. The proposed new lot would be approximately 85 feet wide by 70½ feet deep resulting in a lot size of 6,009 square feet. The proposed home on the new lot would have the minimum required 10 foot side yard setbacks (one of the proposed side yards is 15 feet), and would have front yard averaging of 26.25 feet; however, in order to construct a home on proposed Lot 755B of comparable size to others in the neighborhood, Petitioners are in need of variance relief from the rear yard setback requirement of 30 feet. As with their home when it was originally built, there is very little room to the rear of the property. In addition, in order to meet the minimum lot size of 6,000 square feet, the proposed lot has a width of 85 feet. This new proposed property line between the two lots cuts into the existing side yard setback, thus necessitating the need for a side yard setback of 5 feet for the existing dwelling.

In support of the variance requests, Ms. Smith, Petitioners' consultant, pointed out that Petitioners had little choice in the layout of the original subdivision and the configuration of their lot. The lots were sectioned off by the developer and sold individually. In addition, when Petitioners' home was built, most of the other homes in the neighborhood were not yet built, so Petitioners did not know where other homes would be located and how close in proximity they

would eventually be to each other. Ms. Smith also indicated the property's uniqueness stems from the long, narrow lot and its position as a corner lot.

The Zoning Advisory Committee (ZAC) comments for these properties were received and are contained within the case file. Comments were received from the Office of Planning dated March 16, 2009 for both cases. For Case No. 2009-0216-A, the comment indicates that the proposed lot is atypical of the adjacent lots in the neighborhood. It will create an atypical compaction of primary and accessory structures. Because the existing house will also require a side yard setback of 5 feet, the appearance will be slightly crowded from the front view. There will be very little yard. The proposal appears to create its own hardship and practical difficulty. Therefore, the Office of Planning recommends denial. For Case No. 2009-0217-A, the comment explains that the existing home sits sideways on the property with a large side yard. The proposal is to divide the property so that the side yard becomes a separate building lot if a rear variance is permitted for that proposed lot, and a side yard variance is permitted for the lot where the existing home is located. The comment concludes that this proposal will greatly increase the density of the corner cluster of residences, and that the proposal appears to create its own hardship and practical difficulty. Therefore, the Planning Office recommends denial. Comments were also received from the Bureau of Development Plans Review dated March 3, 2009 concerning the property's flood elevation and flood protection requirements. Finally, comments were received from the Department of Environmental Protection and Resource Management dated April 22, 2009 which indicates that the properties must comply with the Chesapeake Bay Critical Area Regulations.

I am certainly mindful of Petitioners' desire to utilize this "open" area of their property to subdivide and create another buildable lot. Petitioners indicated during the hearing they are

retired and -- with the abundance of space on the one side of their property -- wanted to explore the potential of creating a second lot. It is also apparent that Petitioners can meet the minimum lot size, front yard and side yard setback requirements for the new lot. The problem is with the rear yard setback of 10 feet in lieu of the required 30 feet and the deficient side yard setback of 5 feet in lieu of 10 feet that results for the existing home with the creation of the new lot. It was also understandable 30 years ago that Petitioners were granted variance relief from the 30 foot rear yard setback requirement to construct their existing home. The lot as platted was a long, narrow, corner lot that limited Petitioners' ability to construct a home; however, in my view, those unique features from 30 years ago simply do not transfer to the instant matter where Petitioners are creating a new lot line and additional lot. Moreover, I agree with the Office of Planning's comment that Petitioners are creating the very hardship and practical difficulty that drives the need for the variances. Hence, the requested relief is not consistent with the requirements of Section 307.1 of the B.C.Z.R., as interpreted in *Cromwell v. Ward*, 102 Md.App. 691 (1995). Finally, I find that granting the requested relief would have a negative overall impact on the surrounding neighborhood and would not meet the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered, I find that Petitioners' variance requests should be denied.

THEREFORE, IT IS ORDERED this 8<sup>th</sup> day of May, 2009 by this Deputy Zoning Commissioner, that the requests for relief for the properties set forth as follows:

**Case No. 2009-0216-A:** For the property located at proposed 7704 South Cove Road, the Variance request from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations

(B.C.Z.R.) to permit a 10 foot rear yard setback in lieu of the required 30 foot setback be and is hereby DENIED; and

**Case No. 2009-0217-A:** For the property located at 7702 South Cove Road, the Variance request from Section 1B02.3.C.1 of the Baltimore County Zoning regulations (B.C.Z.R.) to amend the Variance granted in Case No. 1979-0241-A to allow a side yard setback of 5 feet in lieu of the required 10 feet be and is hereby DENIED.

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

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz