

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
NW/S of Bayside Road, 593' NE/S of		
C/line of Beachwood Avenue	*	ZONING COMMISSIONER
<b>(1224 Bayside Road)</b>		
15 <sup>th</sup> Election District	*	OF
6 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
George Winterling, et ux		
<i>Petitioners</i>	*	<b>Case No. 2009-0252-A</b>
* * * * *		

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, George D. and Denise Winterling. Petitioners request variance relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a side yard setback of 17 feet in lieu of the required 35-foot setback that was approved on December 1, 2006 in Zoning Case No. 07-072-A. The subject property and requested relief are more particularly described on the site plan submitted, which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requested variance was George Winterling, property owner, and R. Alonzo Childress, the professional engineer with R.A. Childress & Associates, Inc., who prepared the site plan for the Petitioners. John Goodman, a property owner whose home is located behind the subject property, appeared as an interested citizen who supported the requested variance at the public hearing. There were no Protestants or other interested citizens in attendance at the public hearing.

By way of background, this property is well known to me because I reviewed and granted variance relief to the previous owners in Case No. 07-072A. This property is located on the north side of Bayside Road, west of Cedar Road and south of Evergreen Road at the eastern end of Baltimore County off of Back River Neck Road. The property is zoned R.C.5 and known as

1/2 of Lot 90 (bisected in 1943 for unknown reasons), Lot 91 and Lot 92 in the “Evergreen Park” subdivision, which was recorded in the Land Records of Baltimore County many years ago (in 1924) prior to the establishment of current zoning regulations. I am aware that many of the lots in this subdivision are undersized and do not meet current R.C.5 requirements. This particular property is heavily wooded, and had been used as a dumping area prior to the hearing in Case No. 07-072-A. Relief is requested as set forth above to allow the Winterlings to construct a single family dwelling with a garage that will have a 17 foot setback from the eastern edge of the property in lieu of the 35 feet mandated by the B.C.Z.R.

On behalf of the Petitioners, Mr. Childress submitted a number of photographs, which provided an overview of the layout of the subject property and surrounding area. The photographs were collectively marked and accepted into evidence as Petitioners’ Exhibits 2B. To accompany the photographs, Mr. Childress also submitted a marked copy of the site plan, which was marked and accepted into evidence as Petitioners’ Exhibit 2A. The marked site plan served as a photo key identifying the location and vantage point of each of the accompanying photographs.

Evidence and testimony revealed that the subject property contains a gross area of 14,975 square feet and is currently served by public water and sewer. The photographs show that many of the existing homes in the surrounding community were built on similar sized lots and are therefore not in compliance with the setbacks required in an R.C.5 zone. Petitioners presented their proposal to five (5) neighboring property owners who each signed and stated that they had no objection to the 17-foot proposed setback on the garage side of the property. John Goodman, who lives behind the subject property and appeared at the public hearing, agreed to sign the same petition, which was marked and accepted into evidence as Petitioners’ Exhibit 3.

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 March 10, 2009, which indicate that the Office does not oppose the Petitioners' request. The Department of Environmental Protection and Resource Management (DEPRM) also submitted a comment dated May 4, 2009, which stated that development of the 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. Additionally, the lot is within the Limited Development Area (LDA) of the Chesapeake Bay Critical Area and lot coverage is limited to 5,445 square feet. Forest clearing up to 20% must be mitigated 1:1, forest clearing between 20-30% must be mitigated at 1.5:1 for the entire area cleared, and forest clearing above 30% requires a variance and mitigation at 3:1 for the entire area cleared.

After reviewing all of the evidence and testimony presented at the public hearing, I am persuaded that the requested variance should be granted. Initially, I find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. This property was already found to be unique in a zoning sense in Case No. 07-072-A, and I reiterate that finding in this Order. The property, similar to many properties in the surrounding area, is undersized and cannot feasibly meet the setback requirements for an R.C.5 zone. Thus, I also find that strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship. It should be noted that the Petitioners' purchase of the property knowing that a variance would be required in order to build a garage does not result in a self-created hardship. *See Roeser v. Anne Arundel County*, 368 Md. 294 (2002). There is simply no land on either side of the lot for the Petitioner to acquire so as avoid the need for a variance. The site is restricted due to its size and location in the Chesapeake

Bay Critical Area, and the proposed location of the garage minimizes impacts on the environment and surrounding locale.

Finally, I find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. The proposed garage will be compatible with the pattern of development of the neighborhood, and is a reasonable accessory use that will allow the Winterlings the common right to use their property in a manner so as to realize its highest and best use in accordance with Maryland law. *See Aspen Hill Venture v. Montgomery County Council*, 265 Md. 303 (1972). Accordingly, I find that this variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R, as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 10<sup>th</sup> day of June 2009 that the Petition for Variance to permit a side yard setback of 17 feet (east side) in lieu of the required 35-foot setback that was approved on December 1, 2006 in Zoning Case No. 07-072-A is hereby GRANTED subject to the following restrictions:

- 1) The Petitioners may apply for their 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 the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The findings in Case No. 07-072-A are expressly incorporated herein by reference.

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

WJW:dlw

\_\_\_\_SIGNED\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
for Baltimore County