

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W/S Powers Road, 70' N of		
Sherwood Road	*	ZONING COMMISSIONER
(10800 Powers Avenue)		
8 th Election District	*	OF
3 rd Council District		
	*	BALTIMORE COUNTY
Maurice L. Bailey, Sr., et ux		
Petitioners	*	Case No. 2009-0256-A

* * * * *

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, Maurice L. Bailey, Sr., and his wife, Cattie R. Bailey. The Petitioners seek relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed replacement dwelling on a lot with a width of 54 feet at the front building line in lieu of the required 100 feet, a lot area of 7,480 square feet in lieu of the required 20,000 square feet, and to approve side yard setbacks of 10 feet in lieu of 15 feet for each side with a sum of side yards of 20 feet in lieu of 40 feet. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request was Maurice Bailey, property owner. Several residents of the surrounding community appeared as interested persons, including adjacent property owners Michele A. Williams (north side)¹, Cynthia Wilkins (south side), and her son Alex Wilkins (10803 Powers Avenue), and daughter, Cianni Rivera.

By way of background, this property is located in close proximity to the Bazil AME Church in one of Baltimore County's 40 historical African-American settlements called Foote's Hill (circa 1840). The church has stood since 1872 and is associated with a remarkable family

¹ Ms. Williams purchased 10802 Powers Lane from Jeffrey Holt in December 2007. Deputy Zoning Commissioner Timothy M. Kotroco, by his Order in Case No. 2000-365-A granted similar relief to allow a single-family dwelling to be constructed on an undersized lot.

founded by Bazil Foote (1811-1878). The church is a plain structure outside with pleasant Victorian era fittings inside. The church has long served as the focus of a community called Foote's Hill. The Foote's migrated to the slave-holding State of Maryland some time before 1840. By 1850, the Foote family was well established with four (4) children. The church's cemetery to the rear of the subject property is where Bazil Foote is buried. It is to be noted that the Petitioners and the Wilkins are descendents of Bazil Foote and his wife, Elizabeth. During the testimony of Cynthia Wilkins, who purchased the lot next to the church at the corner of Sherwood Road and Powers Avenue from her family's estate, with the intention of building a memorial garden for the children of Cockeysville and to be known as the "Foote Family Memorial". A more detailed history can be obtained from Lenwood Johnson of the Baltimore County Office of Planning. Suffice it to say, that the Bazil AME Church provided not only the spiritual but also the educational needs of its community. There have been many successful men and women to come out of Foote Hill.

Further testimony and evidence offered revealed that the subject property is a triangular shaped parcel with 73 feet of frontage on the west side of Powers Avenue than tapering to a width of 39 feet at the rear boundary with the church's cemetery. The property also known as Parcel 475 on Maryland Tax Map 42, a lot of record since 1921, contains a gross area of 0.1977 acres (7,487 square feet), more or less, is zoned D.R.2. The property is currently vacant and covered with brush and trees. Mr. Bailey stated the property has been in his family for over 100 years and once was improved with a single-family dwelling built in 1907. When he and his wife purchased the property in 1984, he razed the home as it was structurally unsound and dilapidated. All that exists are the stone walkway and foundation. Subsequent to the hearing, the Petitioner submitted Exhibit 2, a 1989 Baltimore County Department of Public Works Plat of Powers Avenue, to establish the existence of the house, its size and location on the property. As is often the case with older lots recorded in the Land Records before the effective date of the zoning regulations (1945) which govern land use, the lot is insufficiently sized to meet current regulations. The subject property is 73 feet wide and approximately 120 feet deep

and does not have the area or width at the building lines required by the area regulations.² B.C.Z.R. Section 304, however, provides in pertinent part that a one-family detached dwelling may be erected on an undersized lot provided:

- “A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;*
- B. All other requirements of the height and area regulations are complied with; and*
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.”*

Clearly, the lot is deficient, however, an area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioners and their property. *McLean v. Soley*, 270 Md. 208 (1973), *Belvoire Farms v. North*, 355 Md. 259 (1999). To prove practical difficulty for an area variance, the Petitioners must meet the following:

1. Whether strict compliance with the requirements would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
2. Whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,
3. Whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secure.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. As illustrated on the site plan, the Petitioners desire to re-develop the property for their own use and

² B.C.Z.R. Section 1B02.3.C provides development standards for small lots and requires a minimum lot area per dwelling of 20,000 square feet and a minimum lot width of 100 feet in the D.R.2 zoning classification.

convenience with a new two-story home not to exceed 30' wide x 46' deep. The most affected neighbor, Michele Williams, who recently purchased her home fears that the proposed home on such a small lot positioned 10 feet from her property line will overcrowd the land and diminish the value of her substantial investment. She stated that at the time of her purchase, the seller told her nothing could be built between her home and Sherwood Road since the adjacent lots were too small. To address this concern and assure the new dwelling will be consistent with Ms. Williams home and with the neighborhood, I will require an architectural review and approval of the Petitioners building elevations by the Office of Planning. In my opinion, it has been established that special circumstances or conditions exist that are peculiar to the property, which is the subject of this request and that the requirements from which the Petitioners seek relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. Again, the fact that this property was platted and recorded many years ago, well prior to the adoption of the B.C.Z.R., is a persuasive factor along with the fact that a dwelling had previously existed on the site where the new home is to be located. In my view, the relief requested will not result in a detriment to the health, safety and general welfare of the surrounding locale and meets the spirit and intent of B.C.Z.R. Sections 304 and 307 for relief to be granted.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 9th day of June 2009 that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a buildable lot for a proposed dwelling with a lot width at the front building line of 54 feet in lieu of the required 100 feet with side setbacks of 10 feet in lieu of 15 feet for each side, with a sum of side yards of 20 feet in lieu

of 40 feet, and a lot size of 7,480 square feet in lieu of the required 20,000 square feet, in accordance with Petitioners' Exhibit 1, and Section 304 of the B.C.Z.R., be and is hereby GRANTED, subject to the following restrictions:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the 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. Prior to the issuance of any building permits, the Petitioners shall submit their building elevation drawings of the proposed dwelling to the Office of Planning for review and approval to insure compatibility in terms of size, exterior, building materials, color and architectural details with the existing dwellings in the area.
3. The Petitioners shall landscape by installing vegetative screening (consisting of arborvitae trees or similar species) along the northern property line between the dwellings to buffer the planned improvements from Michele A. Williams' home (10802 Powers Avenue). The Petitioners shall submit a landscape plan consistent with these goals and objectives to Avery Harden, Baltimore County Landscape Architect, for his advice as to the type of trees and their location and obtain his approval. The planting of such trees is to be done (weather permitting) prior to the completion of construction of the dwelling on Petitioners property.

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

WJW:dlw

__ORIGINAL SIGNED__
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County