

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Bird River Grove Road;	*	DEPUTY ZONING
5,230 feet E of the c/l of Ebenezer Road	*	COMMISSIONER
15 th Election District	*	FORBALTIMORE COUNTY
6 th Councilmanic District	*	
(11212 Bird River Grove Road)	*	
Valerie E. Thurmond	*	CASE NO. 2009-0286-A
<i>Petitioner</i>	*	

* * * * *

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, Valerie E. Thurmond. Petitioner is requesting variance relief from Sections 1A01.3.B.3 and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a dwelling with a side yard setback of 11 feet on both sides in lieu of the required 35 feet, respectively, for a replacement dwelling, and to permit an open projection (deck) with side yard setbacks of 11 feet on both sides in lieu of the required 26.25 feet, respectively. 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 Valerie E. Thurmond. There were no Protestants or interested citizens in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is rectangular in shape and contains approximately 0.238 acre, more or less, zoned R.C.2. This waterfront property is located on the north side of Bird River Grove Road and east of Ebenezer Road in the White Marsh area of Baltimore County. The property was improved with a brick single-family dwelling until an unexpected fire in 2008 destroyed the majority of the home. Photographs that

were marked and accepted into evidence as Petitioner's Exhibits 4A through 4D depict the damage from the fire as well as the remaining portion of the home. Petitioner has lived in the home, originally built in 1947, since 2004 as indicated on the Real Property Data Search marked and accepted into evidence as Petitioner's Exhibit 2. Petitioner desires to raze the remaining brick and block shell of the dwelling and construct a replacement home and deck approximately within the existing footprint of the home, as shown on the site plan. Petitioner's proposed dwelling and open projection deck will cover 1,816 square feet of the lot compared with the 1,988 square feet of lot coverage that existed prior to the fire as shown on the site plan.

In order to make the needed improvements, Petitioner is in need of variance relief for the dwelling and open projection deck that will be attached to the new dwelling. Petitioner indicated that the limitations of the lot itself, due to the narrowness of the lot, and the requirements of the Baltimore County Zoning Regulations (B.C.Z.R.) drive the need for the variance in this R.C.2 Zone. In particular, the subject property is extremely long and narrow, much deeper than it is wide, thereby limiting the options on improvements and new construction as shown on the zoning map that was marked and accepted into evidence as Petitioner's Exhibit 5. Moreover, the subject property and existing dwelling predate the adoption of the R.C.2 Zoning classification. Indeed, the home as it existed prior to the fire, did not meet the minimum side yard setback requirements. Further, a number of the neighboring properties with frontage on the Bird River Hydrology Area have similar narrow-rectangular lot shapes to Petitioner, though varying lot sizes due to differences in width and shoreline, and subsequently do not meet the requisite setback requirements as indicated on Petitioner's Exhibit 5.

Finally, Petitioner submitted a letter that was marked and accepted into evidence as Petitioner's Exhibit 6 from Rick and Pat Barnes of 11210 Bird River Grove Road, an adjacent

neighbor of Petitioner, advising the Zoning Office that they had no objection to the requested variance relief.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Bureau of Development Plans Review dated May 13, 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. Comments were also received from the Department of Environmental Protection and Resource Management dated June 3, 2009 which indicate that the property must comply with the Chesapeake Bay Critical Area Regulations. The property is within a Limited Development Area (LDA) and Buffer Management Area (BMA) of the Chesapeake Bay Critical Area. Lot coverage may go up to 31.25% with mitigation for areas of 25%. All manmade driveway surfaces must be included in lot coverage calculations. 15% afforestation applies in the LDA. All BMA requirements must be met for any redevelopment within the 100f foot buffer.

Considering of all the testimony and evidence presented, I am persuaded to grant the variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The property is irregularly shaped, predates the formulation and adoption of the R.C.2 Zoning regulations, and the former dwelling could not possibly meet the current setback requirements for the R.C.2 Zone. Thus, I find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship. Additionally, the proposed re-construction of the lot minimizes impact on the environment and

surrounding locale as the new dwelling and open-projection deck would be further away from the water than the previous dwelling and carry less square footage than before.

Therefore, I find that the variance requests can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. The proposed dwelling and deck will be compatible with the pattern of development of the neighborhood, and will enable Petitioner the common law right to use her 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). Thus, I find that these variance requests can be granted as to meet the requirements of Sections 1A01.3.B.3 and 301.1 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 this 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 14th day of July, 2009 by this Deputy Zoning Commissioner, that Petitioner's Variance requests from Sections 1A01.3.B.3 and 301.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a dwelling with a side yard setback of 11 feet on both sides in lieu of the required 35 feet, respectively, for a replacement dwelling, and to permit an open projection (deck) with side yard setbacks of 11 feet on both sides in lieu of the required 26.25 feet, respectively, be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her 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. 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.
3. 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.
4. 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.
5. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.
6. 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).
7. The property is within a Limited Development Area (LDA) and Buffer Management Area (BMA) of the Chesapeake Bay Critical Area. Lot coverage may go up to 31.25% with mitigation for areas of 25%. All manmade driveway surfaces must be included in lot coverage calculations. 15% afforestation applies in the LDA. All BMA requirements must be met for any redevelopment within the 100f foot buffer.

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