

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W side at corner of Parsons Avenue and		
Ridge Avenue	*	DEPUTY ZONING
3 rd Election District		
4 th Councilmanic District	*	COMMISSIONER
(6602 Parsons Avenue)		
	*	FOR BALTIMORE COUNTY
John Edward Johnson		
<i>Petitioner</i>	*	
Patrick Brailsford		
<i>Contract Purchaser</i>	*	CASE NO. 2009-0299-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, John Edward Johnson, and the contract purchaser, Patrick Brailsford. Variance relief is requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling to have a side street setback of 10 feet, a lot width of 50 feet, and a lot area of 5,500 square feet in lieu of the required 25 feet, 55 feet and 6,000 square 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 Patrick Brailsford, the contract purchaser, and Bernadette Moskunus, of Site Rite Surveying, Inc., the land surveying firm that prepared the site plan. There were no Protestants or other interested citizens in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is rectangular in shape and contains approximately 0.126 acres or and 5,500 square feet, more or less, zoned D.R.5.5. This property is located in the “Brighton” subdivision on the western corner of the intersection of

Parsons Avenue and Ridge Avenue in the Halethorpe area of Baltimore County. It should be noted that both Parsons Avenue and Ridge Avenue are 60 foot right of ways as depicted on the redlined site plan that was marked and accepted into evidence as Petitioner's Exhibit 7A. This corner lot is vacant and unimproved as evidenced by the photographs of the property that were marked and accepted into evidence as Petitioner's Exhibits 4A through 4E. These photographs also indicate that the subject property currently has numerous trees and vegetation and that the surrounding properties are residential in nature.

The subject property is composed of Lots 2 and 4 of Section M in the Brighton subdivision, as shown on the subdivision plat that was marked and accepted into evidence as Petitioner's Exhibit 3. The subdivision plat also documents that the subject property has been a lot of record since 1889. Proffered testimony also indicated that according to a title search, Lots 2 and 4 have been held intact as one property since 1967. Moreover, it was stated that these lots were intended as buildable lots, evidenced by the existence of access to a sewer line and other public utilities and the residential nature of the Brighton subdivision. It was also noted that in-fill development within the subdivision has been common and that such development is favored by Baltimore County due to the proximity and adequacy of public services and utilities.

Ms. Moskunas explained that variance relief is necessary in order to improve the vacant subject property with a proposed two-story single-family dwelling due to the unusual features of the property and the undue hardship that would result from strict application of Section 1B02.3.C.1 of the B.C.Z.R. Specifically, the age of the record plat (120 years), the corner location of the subject property on the intersection of Parsons Avenue and Ridge Avenue, and the width of the adjacent right-of-ways, renders the property unique. Ms. Moskunas also noted that record plats of a nearby subdivision, Campfield Gardens, which were marked and accepted into evidence

as Petitioner's Exhibits 7B and 7C show that right-of-ways in the nearby area are predominantly 50 feet in width. If this were the width of the Parsons and Ridge right-of-ways within the Brighton subdivision, each 60 feet in width, then the subject property would meet both the lot width and area for a D.R.5.5 Zone required by Section 1B02.3.C.1 of the B.C.Z.R. This fact, although not determinative, contributes to the pervasive unique nature of the subject property.

Although Ms. Moskunas indicated that the subject property was in an "area of concern" with regards to the public sanitary sewer, a letter dated April 20, 2009 from David L. Thomas, Assistant to the Director of the Department of Public Works, marked and accepted into evidence as Petitioner's Exhibit 6, grants permission for the subject property to connect into the public sewer.

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 June 15, 2009 which indicates that Petitioner does not own sufficient adjoining land to conform to the minimum width and area requirements and therefore does not meet the standards stated in Section 304.1.C of the B.C.Z.R. Additionally, there appears to be several existing undersized lots in the neighborhood. As such, the Planning Office does not oppose Petitioner's request. If the variance request is granted, Petitioner shall submit building elevations for review and approval, the dwelling shall be compatible in size, exterior building materials, color and detail as that of the existing dwellings in the area, and Petitioner should provide landscaping along the public road.

Considering of all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land and structure that is the subject of the variance requests. The property is extremely narrow, dates back 120 years to 1889, and is constrained by its corner lot location and the width of Parsons Avenue and Ridge Avenue. Hence, the imposition

of zoning on this property disproportionately impacts the subject property and would result in practical difficulty or unreasonable hardship if strict compliance with the B.C.Z.R. were required. Additionally, as it is evident that the subject property was intended as a buildable lot since it was platted in 1889. In this instance the proposed in-fill development is appropriate and would not negatively impact the surrounding properties or residential nature of the Brighton subdivision.

Finally, I find these 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 improvements on the property will be compatible with the pattern of development in the neighborhood and that envisioned when these lots were recorded in 1889. Further the need for the requested variances is substantial, necessary and not simply for Petitioner's convenience. *See, McLean v. Soley*, 270 Md. 208 (1973). Thus, I find that these variance requests can be granted as to meet the requirements of Section 307.1 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 amended 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 20th day of July, 2009 by this Deputy Zoning Commissioner, that Petitioner's request for Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling to have a side street setback of 10 feet, a lot width of 50 feet, and a lot area of 5,500 square feet in lieu of the required 25 feet, 55 feet and 6,000 square feet, respectively be and are hereby GRANTED. The relief granted herein shall be subject to the following:

1. Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his 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. Petitioner shall submit building elevations to the Office of Planning for review and approval prior to the issuance of any building permit.
3. The proposed dwelling shall be compatible in size, exterior building materials, color and architectural detail as that of the existing dwellings in the area.
4. Petitioner 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