

IN RE: PETITION FOR VARIANCE
S side of Blackhead Road; 150 feet W
of the c/l of Crooks Road
15th Election District
6th Councilmanic District
(6537 Blackhead Road)

Erik Griffin
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **CASE NO. 2009-0312-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, Erik Griffin. Petitioner is requesting Variance relief from Section 1A01.3.A of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a structure (new dwelling) with a height of 44 feet in lieu of the permitted 35 feet. 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 request were Petitioner Erik Griffin and David Billingsley with Central Drafting & Design, Inc., Petitioner’s land use consultant. There were no Protestants or other interested citizens in attendance at the hearing.

Testimony and evidence offered proceeded by way of a proffer from Mr. Billingsley and revealed that the subject property is rectangular in shape, contains 0.861 acre zoned R.C.2 and is located in the Bird River Beach area of Baltimore County. The subject property is located on the south side of Blackhead Road and west of Crooks Road. Single-family dwellings located on the north side of Blackhead Road -- across from the subject property -- front Bird River and are located in a floodplain as shown on the GIS map marked and accepted into evidence as

Petitioner's Exhibit 5.¹ Further, these properties and the subject property are located in the Chesapeake Bay Critical Area. Petitioner acquired the subject property in August 2001 as Lots 152, 153, and 154 (6537 Blackhead Road), along with Lots 155, 156, and 157 (6545 Blackhead Road). As shown on the plat marked and accepted into evidence as Petitioner's Exhibit 4, these lots were recorded on September 19, 1923 as part of the "Section 2, Bird River Beach" subdivision.

The subject property, 6537 Blackhead Road, and the adjacent property to the east, 6545 Blackhead Road, were the subject of a prior zoning case on March 24, 2009.² Case Number 2009-0177-SPH granted approval of the subject property, in accordance with Section 500.7 of the B.C.Z.R., as a buildable lot containing 0.861 acre in lieu of the required one acre for a new dwelling. During the aforementioned hearing, Mr. Billingsley -- who was also working with Petitioner at that time -- indicated that the conditions of the property as known at that time did not mandate a request for a height variance. As a condition of approval of Petitioner's special hearing request, soil evaluations for the property had to be conducted in order to determine a septic reserve area. The results of these evaluations are what bring Petitioner before this Commission to request variance relief from Section 1A01.3.A of the B.C.Z.R.

The percolation tests conducted by Petitioner to determine a septic reserve area produced inconsistent results. These tests, alpha numerically designated on Petitioner's Exhibit 1 as A through D, indicated that the ground water contained significant quantities of sand and clay, indicative of abnormal amounts of moisture. Although these conditions are sufficient for a septic reserve area, they are not adequate for a basement as originally planned by Petitioner. In order to

¹ The subject property is not in a designated floodplain; however, as indicated on Petitioner's Exhibit 5, such a designation does not imply that a property will or will not be free from flooding or damage. The closer a property is to such a floodplain the greater the likelihood that such a property will have soil conditions similar to those within the floodplain.

² Case Numbers 2009-0176-A and 2009-0177-SPH.

alleviate this problem, homes that have soil conditions similar to the subject property -- typically properties in floodplains and the Chesapeake Bay Critical Area -- raise the home in order to avoid groundwater seeping into the basement or ground floor. Mr. Billingsley indicated that Petitioner proposes to similarly raise his home to alleviate these conditions as shown on the architectural rendering and elevation plan marked and accepted into evidence as Petitioner's Exhibit 6. Further, Mr. Billingsley stated that nearby homes damaged significantly by previous flood and groundwater, specifically 6536 and 6542 Blackhead Road, have rebuilt their homes in this manner. A variance is needed to permit the new dwelling to have a height of 44 feet in lieu of the required 35 feet pursuant to Section 1A01.3.A of the B.C.Z.R. Mr. Billingsley explained that these conditions disproportionately and uniquely affect the subject property and that strict compliance with the Baltimore County Zoning Regulations would result in practical difficulty and undue hardship.

Mr. Billingsley additionally offered that the proposed height of the home would not adversely effect nearby neighbors or the surrounding community. Specifically, because the subject property is located in a densely wooded area containing large amounts of forestation, the proposed dwelling would not be highly visible by nearby property owners. Moreover, the proposed height of the home would not obstruct any water views of surrounding properties. Petitioner also alluded to the architectural rendering of the home in Petitioner's Exhibit 6 to show that the proposed dwelling would have aesthetically pleasing architectural features including attractive alternating roof lines. Finally, Mr. Billingsley offered his opinion that the proposed dwelling would be architecturally cohesive with recently built homes in the Bird River Beach area and would contribute to the overall character and aesthetics of the community.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental

Protection and Resource Management dated July 27, 2009, which indicate that the property must comply with the Chesapeake Bay Critical Area Regulations. The property is in a Limited Development Area (LDA) of the Chesapeake Bay Critical Area. All LDA requirements apply, including lot coverage limits of 15% and forest clearing provisions. Clearing of forest up to 20% must be replaced at a 1:1 ratio, clearing between 20% and 30% must be replaced at a 1:5:1 ratio for the entire area cleared, and clearing over 30% requires a Critical Area Variance approval and 3:1 mitigation for the entire area cleared.

Considering all the testimony and evidence presented, I am persuaded to grant the requested 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. Specifically, the location of the property in the Chesapeake Bay Critical Area, the proximity of the property on the periphery of a designated floodplain, and the subject property's highly irregular soil and groundwater conditions, render the subject property unique. Further, I conclude that Petitioner would suffer practical difficulty and undue hardship if the variance were to be denied. I further 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. In my view, the proposed height of the dwelling will not obscure the water views of the surrounding properties and the dwelling itself will be screened from the view of other properties as a result of the densely wooded nature of the subject property.

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 request should be granted.

THEREFORE, IT IS ORDERED this 12th day of August, 2009 by this Deputy Zoning Commissioner, that Petitioner's Variance relief request from Section 1A01.3.A of the Baltimore

County Zoning Regulations (B.C.Z.R.) to permit a structure (new dwelling) with a height of 44 feet in lieu of the permitted 35 feet be and is 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. 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).
3. The property is in a Limited Development Area (LDA) of the Chesapeake Bay Critical Area. All LDA requirements apply, including lot coverage limits of 15% and forest clearing provisions. Clearing of forest up to 20% must be replaced at a 1:1 ratio, clearing between 20% and 30% must be replaced at a 1:5:1 ratio for the entire area cleared, and clearing over 30% requires a Critical Area Variance approval and 3:1 mitigation for the entire area cleared.

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