

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S side of Waldman Avenue; 387.5 feet		
E of the c/l of Murray Avenue	*	DEPUTY ZONING
15 th Election District		
7 th Councilmanic District	*	COMMISSIONER
(7315 Waldman Avenue)		
	*	FOR BALTIMORE COUNTY
William and Pasqualina Biggs		
<i>Petitioners</i>	*	CASE NO. 2009-0335-A

* * * * *

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S side of Waldman Avenue; 437.5 feet		
E of the c/l of Murray Road	*	DEPUTY ZONING
15 th Election District		
7 th Councilmanic District	*	COMMISSIONER
(7317 Waldman Avenue)		
	*	FOR BALTIMORE COUNTY
William and Pasqualina Biggs		
<i>Petitioners</i>	*	
Amber and James Bertholdt		
<i>Contract Purchasers</i>	*	CASE NO. 2009-0336-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before this Deputy Zoning Commissioner for consideration of Petitions for Variance filed by the legal property owners, William and Pasqualina Biggs. In each case number, Petitioner is requesting the following Variance relief:

Case No. 2009-0335-A: For the property located at 7315 Waldman Avenue, the Variance request is from Sections 1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing dwelling with a lot width of 50 feet, front yard average setback of 20 feet, and side yard setback of 8 feet in lieu of the required 55 feet, 39.375 feet, and 10 feet, respectively.

Case No. 2009-0336-A: For the property located at 7317 Waldman Avenue, the Variance request is from Section 1B02.3.C.1 of the B.C.Z.R. to permit a proposed dwelling with a lot width of 50 feet in lieu of the required 55 feet. Since the properties are owned by the same persons and are located adjacent to one another, the two cases were heard contemporaneously. The subject properties and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing on behalf of the property owners and in support of the variance requests was Bernadette Moskunas with Site Rite Surveying, Inc., the firm that prepared the site plan for the two properties. Also appearing in support of the requested relief were Amber and James Bertholdt, the contract purchasers for the 7317 Waldman Avenue property. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the two properties situated side-by-side at 7315 and 7317 Waldman Avenue, respectively, each consist of 10,000 square feet or 0.229 acre, more or less, zoned D.R.5.5. Each property measures approximately 50 feet wide by 200 feet deep. As shown on the vicinity map on the site plan, they are located on the south side of Waldman Avenue, north of Hughes Avenue and east of Murray Avenue and west of Lincoln Avenue in the Sparrows Point area of Baltimore County. The properties are also located east of the Sparrows Point Industrial Complex on a peninsula that is surrounded by Jones Creek. Both properties have access to public water and sewer services. The property at 7315 Waldman Avenue (Case No. 2009-0335-A) is improved with a one-story single-family dwelling and a garage located in the rear yard. The property at 7317 Waldman Avenue (Case No. 2009-0336-A) is currently unimproved.

The legal property owners, William and Pasqualina Biggs, have owned the properties since 1983 and have resided at 7315 Waldman Avenue during that time. A copy of the SDAT Data Search printouts for each property and the Deed were collectively marked and accepted into evidence as Petitioner's Exhibit 2. The Deed delineates the two properties as separate lots. The improved property at 7315 Waldman Avenue is identified as Lot 129 and the unimproved property at 7317 Waldman Avenue is identified at Lot 130. The properties are part of the Chesapeake Terrace, Section "B" subdivision that was recorded on July 22, 1919. A copy of the record plat was marked and accepted into evidence as Petitioner's Exhibit 3 and shows the subject properties, Lot 129 and 130, respectively. Except for irregular-shaped lots due to the uneven configuration of the shoreline, virtually every lot in the subdivision has a standard 50 foot width.

At this juncture, the property owners, Mr. and Mrs. Biggs, desire to sell Lot 130 to Amber and James Bertholdt and both parties seek a variance from the 55 foot minimum width requirement in order to build a single-family residence on that property. In so doing, Mr. and Mrs. Biggs also seek variance relief for Lot 129, the site of their primary residence, in order to legitimize existing conditions on that property for minimum width, front yard, and side yard setback requirements. The location and general appearance of the properties is confirmed in the aerial photographs that were marked and accepted into evidence as Petitioner's Exhibits 4A and 4B, respectively. Mr. and Mrs. Bertholdt also submitted a document that was marked and accepted into evidence as Petitioner's Exhibit 5, with signatures from adjacent neighbors supporting their 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 Office of Planning dated July 23,

2009 which indicates that Petitioners 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. However, there appear to be several existing undersized lots in the neighborhood. As such, the Planning Office does not oppose Petitioners' requests, but notes that if the requests are granted, several conditions should apply to the proposed dwelling, including: submit building elevations for review and approval prior to the issuance of any building permit; dwelling shall be compatible in size, building materials, color and architectural detail as that of the dwellings in the area; and provide landscaping along the public road. Comments were received from the Department of Environmental Protection and Resource Management (DEPRM) dated September 9, 2009 indicating that development of the properties must comply with the Chesapeake Bay Critical Area (CBCA) Regulations (Sections 33-2-101 through 33-2-1004, and other sections, of the Baltimore County Code). The properties are also within the Limited Development Area (LDA) of the CBCA and must meet all LDA requirements, including 15% afforestation and lot coverage limits of 31.25%. Mitigation is required for lot coverage between 25% to 31.25%.

Considering of all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. Chiefly, the evidence indicates that the subject properties were platted and have been held intact as lots of record since 1919, well before the adoption of Zoning Regulations in Baltimore County. As is often the case with older subdivisions, many of the lots are undersized and do not meet current width and setback requirements. Although other properties in the area were improved with single-family dwellings over 70 years ago on 50 foot wide lots and are "grandfathered," the property at 7317 Waldman Avenue is unimproved and, although identical to

other nearby properties in almost every respect, is subject to the 55 foot minimum width. Hence, in my view, the imposition of current zoning on the properties disproportionately impacts the subject lots as compared to other properties in the zoning district.

Finally, I find these variance requests can be granted in strict harmony with the spirit and intent of Section 307 of the B.C.Z.R. The variances for 7315 Waldman Avenue will legitimize existing conditions, while the variance for 7317 Waldman Avenue will provide for infill development where there is availability of existing services such as water and sewer services. Moreover, the proposed dwelling will meet all front, side, and rear setback requirements and will be situated on the lot consistent with other homes in the community. The only deficiency in this instance is lot width, which is just 5 feet shy of the required 55 feet. In my view, the relief will not result in any detriment to the public health, safety and general welfare of the surrounding locale.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions 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 9TH day of September, 2009 by this Deputy Zoning Commissioner, that Petitioner's Variance relief requests for the properties set forth as follows:

Case No. 2009-00335-A: For the property located at 7315 Waldman Avenue, the Variance requests from Sections 1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing dwelling with a lot width of 50 feet, front yard average setback of 20 feet, and side yard setback of 8 feet in lieu of the required 55 feet, 39.375 feet and 10 feet, respectively, be and are hereby GRANTED; and

Case No. 2009-0336-A: For the property located at 7317 Waldman Avenue, the Variance request from Section 1B02.3.C.1 of the B.C.Z.R. to permit a proposed dwelling with a lot width of 50 feet in lieu of the required 55 feet, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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 such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners shall submit building elevations to the Office of Planning for review and approval prior to the issuance of any building permit. The proposed dwelling at 7317 Waldman Avenue shall be compatible in size, exterior building materials, color and architectural details as that of the existing dwellings in the area.
3. Petitioners shall provide landscaping along the public road as directed by the Office of Planning.

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