

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/S Holly Beach Road, 1,340' E of c/line of		
Henrietta Avenue	*	ZONING COMMISSIONER
(2710 Holly Beach Road)		
15 th Election District	*	OF
6 th Council District		
	*	BALTIMORE COUNTY
Michael J. McQuade, et ux		
<i>Petitioners</i>	*	Case No. 2009-0340-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, Michael J. McQuade, and his wife, Barbara W. McQuade. The Petitioners request variance relief from Section 1A04.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: **(1)** from Section 1A04.3.B.1.a to allow an existing lot of record to have a lot area of 0.25 acres in lieu of the required 1.5 acres; **(2)** from Section 1A04.3.B.3 to permit 22% (2,453 square feet) of the lot to be covered by buildings in lieu of the allowed 15% (1,636 square feet); **(3)** from Section 1A04.3.A to allow a building height of 38 feet in lieu of the allowed 35 feet, and **(4)** from Section 1A04.3.B.2.b to permit setbacks from any lot line other than a street line of 5 feet (side yards) and 40 feet (front) in lieu of the required 50 feet. The subject property and requested relief are more particularly described on the site plan and building elevation drawings submitted which were accepted into evidence and marked as Petitioners' Exhibits 1 and 2 respectively.

Appearing at the requisite public hearing in support of the request were Michael and Barbara McQuade, property owners; Mark L. Robel, a registered property line surveyor with Fisher, Collins & Carter, Inc., who prepared the site plan for this property; Timothy Miller, with Gothic Enterprises, Inc., the architectural firm that provided the building elevations, and Thomas J. Hoff, a land use and zoning consultant assisting the Petitioners. There were no Protestants.

Law school students Lindsey Brooks and David Coppersmith attended the hearing as interested persons.

Testimony and evidence offered disclosed that the subject property is an irregular shaped, rectangular waterfront lot, located on the north side of Holly Beach Road near its terminus at Booby Point on the Chesapeake Bay within the Martin State Airport Restriction Area. The property contains a gross area of 11,648 square feet (0.27 acres), more or less, zoned R.C.5 and is improved with a modest one-story dwelling (27' wide x 46' deep) built in 1940. The Petitioners desire to redevelop the property with a new two-story single-family dwelling and attached garage; however, given the small area and width of the lot, the requested variances are necessary in order to proceed. In this regard, testimony disclosed that the property is also known as Lot 12 of Boring Point, which is an older subdivision that was recorded in the Land Records well prior to the adoption of the R.C. 5 zoning regulations in Baltimore County. Thus, many of the lots in this community are undersized and cannot meet current lot width and area requirements for development purposes¹. As shown on the site plan, the Petitioners propose razing the existing dwelling and constructing a new house in essentially the same location. The new house will be a two-story structure, 34' x 80' in dimension with the attached two-car garage on the Holly Beach side of the dwelling. The copula (over the garage) and pointed roof pitch of the Victorian tower at the front of the home (over the lounge) will be 38 feet high. All other portions of the roof, including the ridge cap, will be less than 35 feet. *See* Page 1 of Petitioners' Exhibit 2. Side yard setbacks of 5 feet each are requested as the lot tapers from 79 feet at its

¹ B.C.Z.R. Section 1A04.3.B.1.B(1) provides for an exception to minimum lot sizes. This section states in pertinent part, "the owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003, but does not meet the minimum acreage requirement, or does not meet the setback requirement of paragraph 2, may apply for a special hearing under Article 5 to alter the minimum lot size requirement ... ". The Zoning Review Office, having determined that the subject parcel of land was in the subdivision of "Boring Point" recommended filing a petition for variance relief under B.C.Z.R. Section 307 as opposed to a petition for special hearing. *See* Case No. 07-243-SPHA involving 2722 Holly Beach Road where similar relief was granted through a special hearing proceeding.

frontage on the Chesapeake Bay to 37 feet wide at Holly Beach Road. While the proposed improvements will feature similar setbacks, the new building coverage will be in excess of the maximum 15% allowed, thus the requested relief is necessary.

In further support of the variance request, Petitioners introduced photographs of the subject property and surrounding areas. These photographs evidence that the property is serviced by public water and sewer (a grinder pump system was installed several years ago). They point to the fact that adjacent properties along the shoreline sit further towards the water on the west side by approximately 60 feet. Also, the adjacent property to the east will not have its water view impacted as the proposed structure has been designed to sit back 15 feet further from the water than the existing house. The McQuade's opine that the granting of the variance request would not have an adverse affect on any adjacent neighbors nor would granting the variance request be detrimental to the health, safety and general welfare of the community. In this regard, letters of support were received from adjacent neighbors Michael and Nancy Sobus, 2716 Holly Beach Road, and Gerard and Eileen Fieden, 2708 Holly Beach Road, expressing their approval following the review of the house plans and variance requests. *See* Petitioners' Exhibit 3.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. The ZAC comment received from the Department of Environmental Protection and Resource Management (DEPRM), dated September 9, 2009, indicates that the development of the subject property must comply with the Chesapeake Bay Critical Area Regulations. It also states the property is within a Limited Development Area (LDA) and Buffer Management Area (BMA) and must comply with the regulations related to these areas as well, including that impervious surfaces are limited to 31.25% and that 15% afforestation must be addressed. The ZAC comment received from the Office of Planning, dated September 10, 2009, indicates the Office does not oppose Petitioners' variance requests, but that the property must comply with the R.C.5 requirements. In order for Planning to prepare a statement of finding as

to compliance, a litany of information must be submitted to the Planning Office, which includes photographs of existing adjacent dwellings, building elevations, design information of all structures and appurtenances, and landscaping information.

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. It is clear that strict compliance with the regulations would result in a practical difficulty and unreasonable hardship for the Petitioners and prevent use of the property for a permitted purpose. The fact that this subdivision was recorded many years ago is persuasive. Moreover, there were no adverse comments submitted by any County reviewing agency and the proposal is consistent with the pattern of development in the neighborhood. Thus, I find that the relief requested is appropriate and that there will be no detrimental impact to adjacent properties or surrounding locale. However, as a condition of approval, the Office of Planning has requested that building elevation drawings of the proposed dwelling be submitted for their review and approval prior to the issuance of any permits to assure compatibility with existing houses in the neighborhood. Moreover, due to the property's waterfront location and its location within a floodplain, the proposed construction shall comply with Chesapeake Bay Critical Areas regulations and Federal Flood Insurance requirements, as set forth in the attached comments submitted by the Department of Environmental Protection and Resource Management (DEPRM) and the Development Plans Review Division.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the B.C.Z.R. having been met, 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 11th day of September 2009 that the Petition for Variance seeking relief from Section 1A04.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: (1) from Section 1A04.3.B.1.a to allow an existing lot of record to have a lot area of 0.25 acres in lieu of the

required 1.5 acres; **(2)** from Section 1A04.3.B.3 to permit 22% (2,453 square feet) of the lot to be covered by buildings in lieu of the allowed 15% (1,636 square feet); **(3)** from Section 1A04.3.A to allow a building height of 38 feet in lieu of the allowed 35 feet, and **(4)** from Section 1A04.3.B.2.b to permit setbacks from any lot line other than a street line of 5 feet (side yards) and 40 feet (front) in lieu of the required 50 feet, in accordance with Petitioners' Exhibits 1 and 2, be and the same is hereby GRANTED; subject, however 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 thirty (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 permits, the Petitioners shall submit building elevation drawings of the proposed dwelling, including proposed building materials, color scheme, and architectural details, to the Office of Planning for review and approval to insure compatibility with existing houses in the area.
3. Compliance with Chesapeake Bay Critical Areas regulations and all other appropriate environmental, floodplain and B.O.C.A. regulations relative to the protection of water quality, streams, wetlands and floodplains.
4. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code (B.C.C.).

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County