

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
S/S Galena Road, 62' E of Waterford Road	*	ZONING COMMISSIONER
(1502 Galena Road)		
	*	FOR
15 th Election District		
7 th Council District	*	BALTIMORE COUNTY
Gary Lee Jacobs, et ux	*	Case No. 2010-0014-SPHA
Petitioners		
	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owners of the subject property, Gary Lee Jacobs, and his wife, Micaela M. Aigner-Jacobs. The Petitioners request a special hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve the continued use of the property for two (2) non-conforming dwelling units. Additionally, variance relief is requested from B.C.Z.R. Section 1B02.3.C.1 to permit an addition with a setback of 3 feet in lieu of the required 10 feet. The subject property and requested relief are more particularly described on the site plan, which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing were the Petitioners, Gary and Micaela Jacobs. There were no Protestants or other interested persons present; however, this matter came before me as the result of a complaint registered with the Code Enforcement Division of the Department of Permits and Development Management filed by Rick Szymanski relative to the two story addition at issue. A resolution of the violation case (Case No. 0061800) is pending the outcome of this request. It should be noted that the fact that a code violation is issued is generally not considered in a zoning case. Zoning enforcement is conducted by the Department of Permits and

Development Management, which has the authority to issue Correction Notices and Citations, and to impose fines and other penalties for violation of law. On the other hand, the role of this office in this matter is to decide the discreet legal issue of whether the Petitioners are entitled to the requested special hearing and variance relief pertaining to the subject property.

Testimony and evidence offered revealed that the subject property is essentially a rectangular shaped waterfront parcel located on the south side of Galena Road, just east of Waterford Road in Essex and within the Martin State Airport Restriction Area. The lot is identified as being Lot 29-A in the Hyde Park subdivision, which is an older subdivision that was platted and recorded in the Land Records in the early 1900's, thus prior to the first set of zoning regulations in Baltimore County. As is often the case with older subdivisions, many of the lots are undersized, do not meet current area and width requirements, and have been used in ways that are now considered non-conforming. In this regard, the Jacobs family has owned the lot since 1976 that contains 0.27 acres (11,904 square feet), and is zoned D.R.5.5.

Gary Jacobs grew up in the area and provided a detailed history of the improvements on the property. On the northern portion of the lot set back approximately 59 feet from Galena Road, is a dwelling (20' x 22') built in 1914 and located three (3) feet from the adjoining western property line. The property is 44 feet wide at this point but widens to 63 feet at its frontage on Back River where the Petitioners' primary dwelling is located. Testimony revealed that the 1914 structure, known as 1502R Galena Road, was historically known as Pope's Store until the 1940's. It was then converted to a single-family residence prior to 1950 and rented to tenants until 2009. Mr. and Mrs. Jacobs desire to renovate this structure and add a two-story addition (20'-4" x 24') on the front of the home. As illustrated on the site plan, the new addition is attached to the existing structure and is no closer to the adjacent property line than the existing

structure. The adjacent neighbors – August and Luanne Tomak (1503 Waterford Road – Lot 29) and William and Carolyn Kruse (1504 Waterford Road – Lot 29B) both provided letters in support of the two-story addition that will be used as garage (1st floor) and additional living space on the second floor. The letters were respectively marked and accepted into evidence as Petitioners’ Exhibits 2 and 3.

Testimony revealed that Petitioners intend to use the renovations to the existing and new addition as an updated mother-in-law residence for Mrs. Jacobs’ mother, Carmen Aigner, who is aging and in need of care. It is this structure known as 1502R Galena Road that brings the Petitioners before me seeking relief as set forth above to permit redevelopment of the property with a new addition. The Petitioners home, 1502 Galena Road, fronting on Back River positioned on the southern portion of the lot, is not in any way being altered. It is to be noted that both properties are served by public water and sewer.

In support of the nonconforming use, Petitioners provided letters from three neighbors who have all lived in this neighborhood since 1954. The letters, which were collectively marked and accepted into evidence as Petitioners’ Exhibit 4, each state that the second dwelling on the subject property has existed in its current location and has been in continuous use since 1955 or before. Gary Jacobs also provided testimony that he has lived on the subject property for many years and has used the second structure on the property for residential purposes without any interruption.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments dated July 28, 2009 were received from the Bureau of Development Plans Review, who stated that each dwelling should have two off-street parking

spaces and there appears to be more buildings on the site than are shown on the plan. The Office of Planning submitted a comment dated August 5, 2009, which stated that,

“the subject site appears to generally be a non-conforming use. The proposal will remove several smaller structures and upgrade the appearance of the existing second residence. Although non-conforming to the regulations, it is not incompatible with the adjacent waterfront properties on the block.”

Additionally, comments dated September 9, 2009 were received from DEPRM, who stated that development of this property must comply with the Chesapeake Bay Critical Area Regulations (CBCA) Section 33-2-101 through 33-2-1004, and other Sections of the Baltimore County Code).

Turning first to the Petition for Special Hearing, the term “nonconforming use” is defined in Section 101 of the B.C.Z.R. as “a legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use.” The Court of Appeals of Maryland has articulated the standard for a permissible nonconforming use and has held that when a property owner at time of adoption of the last comprehensive zoning was using land for use which by new legislative action became non-permitted, the owner has a lawful nonconforming use. *See, e.g., Board of Zoning Appeals v. Meyer*, 207 Md. 389 (1955). Pursuant to Section 104.1 of the B.C.Z.R., a nonconforming use may continue unless the use is abandoned or discontinued for a period of one year or longer.

I am convinced after considering the testimony and evidence presented in this case that a nonconforming use exists for the structure known as 1502R Galena Road. The uncontradicted testimony reveals that this second structure has functioned as a residential dwelling on the subject property since before 1955 and the latest iteration of the B.C.Z.R. I am satisfied that this use has continued to the present day without any period of abandonment for over one year, and

that the Petitioners are therefore entitled to maintain this use pursuant to Section 104.1 of the B.C.Z.R. However, the nonconforming use will be restricted through conditions to apply only to the Petitioners and their immediate family and this use will be deemed abandoned upon any future sale of the property.

Turning next to the Petition for Variance, I am also persuaded that the requested relief should be granted. Initially, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of this variance request. As previously mentioned, the variance seeks to legitimize conditions that have existed on the property since the second structure was built in the early 1900's. Similar to many lots in this area, the property is undersized and the current setback requirements unduly burden the property owners. Thus, I further find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship since the Petitioners would be forced to remove a structure that has existed in its current location for nearly 100 years.

Finally, I find that this 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. The sole testimony presented at the public hearing demonstrated that the Petitioners' immediate neighbors support the requested relief, which will essentially refurbish an existing structure and improve the appearance of the property, in turn benefiting the surrounding locale. Thus, I am persuaded that the request meets the requirements of Section 307 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 these Petitions held, 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 30th day of September 2009, that the Petition for Special Hearing to approve the continued use of the property for two (2) non-conforming dwelling units on a lot, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following condition:

1. The special hearing relief granted to allow the two dwelling units on the subject property is for the use by Gary Lee Jacobs, and his wife, Micaela M. Aigner-Jacobs, personally, and shall not run with the land as to inure to the benefit of any subsequent property lessor or other owner without first obtaining further special hearing approval to do so.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief to allow an addition with a setback of 3 feet in lieu of the required 10 feet, pursuant to Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

2. The Petitioners may apply for their permit(s) 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 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.
3. The materials and design of the two-story addition shall be consistent with the other house on the property. No other structures shall be permitted on the site.
4. Compliance with the recommendations made within the Zoning Advisory Committee (ZAC) comment submitted by the Department of Environmental Protection and Resource Management (DEPRM), dated September 9, 2009, a copy of which is attached hereto and made a part hereof.

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

WJW:dlw

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