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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE |
| W side of Red Lion Road; 1,500 feet | | |
| from the c/l of Stevens Road | * | DEPUTY ZONING |
| Election District | | |
| Councilmanic District | * | COMMISSIONER |
| (11252 Red Lion Road) | | |
| | * | FOR BALTIMORE COUNTY |
| William C. and Barbara A. Brown | | |
| <i>Petitioners</i> | * | CASE NO. 2010-0035-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 owners of the subject property, William C. and Barbara A. Brown. Petitioners are requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard setback of 17 feet from the northwest corner of a proposed dwelling in lieu of the required 30 feet. The subject property and requested relief are more fully described on the site plan as filed that was marked and accepted into evidence as Petitioners' Exhibit 1, and the revised redlined/bluelined site plan that was marked and accepted into evidence as Petitioner's Exhibit 5.

Appearing at the requisite public hearing in support of the variance requests were Petitioners William and Barbara Brown, and Paul Lee, with Century Engineering, Inc., the professional engineer who prepared the site plans. Appearing as interested citizens were nearby neighbors Esther and Deborah Scott of 11248 Red Lion Road. There were no Protestants or other interested citizens in attendance.

Testimony and evidence offered revealed that the subject property is primarily square-shaped and contains approximately 1.15 acres, more or less, zoned D.R.3.5. The property is located approximately 300 feet west of Red Lion Road and north of U.S. Route 40 in the White

Marsh area of Baltimore County. The property also lies approximately one mile north of the terminus of Bird River. The subject property is known as Lot 2A of the “Couplin Tract” subdivision. A copy of the record plat was marked and accepted into evidence as Petitioners’ Exhibit 2 and indicates the plat was recorded on December 20, 1952.

As indicated on the SDAT Real Property Data Search printout that was marked and accepted into evidence as Petitioners’ Exhibit 3, an 816 square foot dwelling was constructed on the property in 1953. Access to the property is by way of a driveway leading from Red Lion Road. Petitioners purchased the property in 1998. At some point prior to Petitioners’ ownership, the dwelling deteriorated into a state of disrepair. Petitioners razed the dwelling after their acquisition of the property, leaving only the foundation from the previous house. In 2003, Petitioners sought to construct a replacement dwelling and, being aware of the environmental constraints on the property, contacted the Baltimore County Department of Environmental Protection and Resource Management (DEPRM) in order to request an environmental assessment of the property to determine the feasibility of a replacement dwelling. In a letter dated April 3, 2003, which was marked and accepted into evidence as Petitioners’ Exhibit 4, DEPRM indicated that “[i]t appears that due to the time elapsed from the demolition of the previous house plus the proposed construction of a larger house and addition of a sewer connection, the lot will no longer be grand-fathered and the property must comply with all of Baltimore County’s current regulations.” As a result, it was indicated that the property would have to comply with Baltimore County Code provisions concerning the protection of water quality, streams, wetlands, and floodplains, including forest buffer and building setback requirements.

Thereafter, Petitioners engaged Mr. Lee, their consulting engineer, to review and evaluate the property in terms of the environmental and potential zoning issues. Mr. Lee prepared the redlined/bluelined site plan that was accepted into evidence as Petitioners' Exhibit 5. This plan shows the comprehensive steps Mr. Lee has taken to identify and delineate the environmental constraints present on the property, and the analyses that have taken place regarding compliance with DEPRM's issues. Approval was granted in a letter from DEPRM to Mr. Lee dated July 17, 2009, which was marked and accepted into evidence as Petitioners' Exhibit 6A.

Following resolution of DEPRM issues, Petitioner is now in need of the instant zoning relief. As Mr. Lee explained, the proposed dwelling on the subject property is shown on the redlined/bluelined site plan at the northwest corner of the property, sufficiently away from the forest buffer area and floodplain. The variance is necessary because the proposed location of the home is 17 feet from the property line that is adjacent to an existing Baltimore Gas & Electric (BGE) right-of-way. A copy of this recorded right-of-way was marked and accepted into evidence as Petitioners' Exhibit 7. As depicted on the redlined/bluelined site plan, the right-of-way is approximately 150 feet wide and contains existing overhead power lines. A small portion of this right-of-way encroaches into the subject property as shown and cuts off a corner of the subject property. As Mr. Lee indicated, it is this situation, combined with the requirements of the forest buffer, slopes and erodible soils analysis, and alternatives analysis that drives the need for the variance. In short, in order to meet current environmental regulations, there is no other feasible location to place a dwelling on the property; and even with the proposed placement, a variance is still necessary, otherwise the property is rendered unbuildable.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

Considering all the testimony and evidence presented, I am persuaded to grant the variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. It is evident that Petitioners were put in a difficult situation because they were unable to build a replacement dwelling on the existing foundation due to the passage of time and the existing environmental constraints on the property. After determining the extent of the environmental impacts and working with DEPRM to resolve those issues, Petitioners are still in need of variance relief from the Zoning Regulations. This is due in part to the environmental requirements that cause the proposed dwelling to be placed in a corner of the property. The variance is also needed as a result of the BGE right-of-way that pinches the corner of the property where the dwelling is proposed. These unusual circumstances cause the subject property to be disproportionately impacted by the rear yard setback regulations as compared with other properties in the District. Hence, I find the property to be unique in a zoning sense. I also find that undue hardship would befall Petitioners if the requested relief were not granted; that is, an existing lot of record since 1952 would be rendered unbuildable for a single-family dwelling that is specifically permitted by the Zoning Regulations.

I further find that the requested 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.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners' variance request should be granted.

THEREFORE, IT IS ORDERED this 13th day of October, 2009 by this Deputy Zoning Commissioner, that Petitioners' Variance request from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a rear yard setback of 17 feet from the northwest corner of a proposed dwelling in lieu of the required 30 feet be and is hereby **GRANTED**, subject to the following:

1. Petitioners are advised that they may apply for any required 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.

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