

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
E side of South Hilltop Road; 110 feet N		
of Woodwind Road	*	DEPUTY ZONING
1 <sup>st</sup> Election District		
1 <sup>st</sup> Councilmanic District	*	COMMISSIONER
(121 South Hilltop Road)		
	*	FOR BALTIMORE COUNTY
<b>Mark E. and Leah A.K. Hayes</b>		
<i>Petitioners</i>	*	<b>CASE NO. 2010-0043-A</b>

\* \* \* \* \*

**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, Mark and Leah Hayes. Petitioners are requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front yard setback of 35 feet in lieu of the required 50 feet for a dwelling. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Petitioner Mark E. Hayes. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is a somewhat irregular shaped rectangular lot containing approximately 1.521 acres (66,245 square feet) of land zoned D.R.1. The currently unimproved property is located on the northeast side of South Hilltop Road, just south of Frederick Road, in the Catonsville area of Baltimore County. As illustrated on the site plan, the lot in question, referred to as Lot 2, lies east of another lot known as Lot 1. Lot 1 was the subject of a variance request in Case No. 2009-0083-A to reduce the front yard setback to 35 feet in lieu of the required 50 feet. That variance request was granted by Zoning Commissioner William J. Wiseman, III in an Order dated November, 2008.

Further evidence revealed that Petitioners are proposing to build a custom home on the subject property, but have had difficulty due to the presence of a large nontidal wetland in the rear of the property. According to Mr. Hays, the Baltimore County Department of Environmental Protection and Resource Management (DEPRM) has demanded a large rear setback in order to maintain the forest buffer easement and the integrity of the environmentally sensitive wetland, and this has driven the need to place the building envelope towards the front (western) portion of the lot. Thus, Petitioners were advised to request a variance in order to move the proposed dwelling away from the forest buffer/forest conservation easement area. A front yard setback of 35 feet is needed in lieu of the minimum 50 feet required in order to develop the lot, while maintaining the forest buffer. The site plan also shows the topography of the property, which slopes downward from the rear yard, away from the property, and further contributes to the need for 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 Department of Environmental Protection and Resource Management (DEPRM) dated September 29, 2009. The comment indicates that development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains and must also comply with the Forest Conservation Regulations. The zoning variance is being sought at the direction of DEPRM to avoid impacting the 35 foot setback to the existing Forest Buffer and Forest Conservation easement. The comment received from the Office of Planning dated September 1, 2009 indicates that they do not oppose the request.

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 request. The property has an irregular shape and the building

envelope is uniquely constrained by the large nontidal wetland that dominates the rear of the property. It is also worth noting that while this property is zoned D.R.1, it is surrounded by properties with larger density zoning such as D.R.5.5 to the southwest and D.R.2 immediately east of the subject property. As shown on the site plan, adjacent homes surrounding the subject property are all built with front yard setbacks of 26 and 33 feet. Thus, I find the imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district, and that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship.

I conclude that the subject property is unique in a zoning sense and that Petitioners 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. Decreasing the front setback will simultaneously permit an aesthetically pleasing custom home that is consistent with the pattern of development of other properties in the surrounding locale, while also maintaining the integrity of the environmentally sensitive nontidal wetland in the rear of the property. Thus, I find that the request for variance meets the requirements of Section 307 of the B.C.Z.R. as interpreted in *Cromwell v Ward*, 102 Md. App. 691 (1995).

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 17<sup>th</sup> day of November, 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 front yard setback of 35 feet in lieu of the required 50 feet for a dwelling 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.
2. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
3. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz