

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
W/S Hinton Avenue, 12.5' N c/line of	*	ZONING COMMISSIONER
2 nd Street		
(9128 Hinton Avenue)	*	OF
15 th Election District	*	BALTIMORE COUNTY
7 th Council District		
	*	
Nicholas D'Adamo, Jr.		
Petitioner	*	Case No. 2010-0079-SPHA

* * * * *

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 owner of the subject property, Nicholas D'Adamo, Jr. The Petition for special hearing seeks a determination that access to Lot 12 is not in conflict with Section 102.4 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, variance relief is requested from Section 1B02.3.C.1 of the B.C.Z.R. to permit a side yard setback of 8 feet (south side) in lieu of the required street side setback of 25 feet and approve a lot width of 50 feet in lieu of the required 55 feet to permit the construction of a replacement dwelling on a lot that does not abut a 30-foot right-of-way. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Nicholas D'Adamo, Jr., property owner, and his builder and land planner, Tony DiJulio, with Accu-Enterprises, Inc. There were no Protestants or other interested persons present.

Testimony and evidence offered disclosed that the subject property is a rectangular shaped waterfront parcel located on Millers Island with frontage on Back River bordered by

Hinton Avenue – east side and 2nd Street (a paper street) – south side. The property is known as Lot 12 of Swan Point and is improved by a wooden bulkhead and pier that extends west into Hawk Cove. The property contains 8,800 square feet (0.2048 acres), more or less, zoned D.R.5.5 and has public water and sewer available. The dimensions (50' x 104') of the corner lot are more particularly shown on the site plan and zoning map submitted as Petitioner's Exhibits 1 and 2. Mr. D'Adamo stated that his family has owned the property since 1968. There had been a house on the land that his father used as a summer home, however, this home was virtually destroyed by Hurricane Isabel in September 2003. At this juncture, the Petitioner desires to erect a two-story home on the property for his own use.

The subdivision of Swan Point was recorded in the Land Records of Baltimore County in 1928. The subject lot, along with the other lots in Swan Point, is 50 feet wide. The D.R. zoning was applied many years after the lot was created. The D.R.5.5 regulations require 55-foot lot widths. Consequently, the Petitioner cannot possibly meet the new zoning regulations. In addition, the Petitioner is requesting a variance from the side street (a paper street) setback requirement of the Zoning Commissioner's Policy Manual (ZCPM) Section 1B02.3.C.2(c)(iii) which requires a setback from a side street of 25 feet pursuant to the D.R.5.5 regulations. The Petitioner's new home will have only 8 feet to the property line. Both Messrs. D'Adamo and DiJulio point out that 2nd Street, which dead ends in the water, is clearly not used by the public. Consequently, there will not be any adverse impact on the community. Mr. D'Adamo testified that there is no land available to purchase on either side of his property, which would alleviate the need for a variance. He argues that the subject property was constrained by the existing zoning, the waterfront nature of its location by 2nd Street, and the 1928 subdivision. He further argued that if the home met the 25-foot side yard to street setback and the 10-foot side yard setback, there would only be 15 feet in which to erect the house. This is an impractical home in

this area and would be wholly incompatible with the community. Mr. DiJulio correctly indicated that the lot would qualify as an undersized lot under Section 304 of the B.C.Z.R.

Finally, relief is requested as set forth above to determine that the proposed access from Hinton Avenue is not in conflict with Section 102.4 of the B.C.Z.R. and Section 32-4-409(c) of the Baltimore County Code (B.C.C.). Section 102.4 provides that, “No dwelling shall be built on a lot containing less than 20,000 square feet which does not abut on a right-of-way at least 30 feet wide over which the public has an easement of travel, except as provided for panhandle lots”. (*See*, Section 32-4-409 of the B.C.C.).

I find that the residential use in this subdivision has been realized for decades. The Petitioner is not creating a lot but replacing a previously destroyed single-family dwelling. Moreover, Eric Rockel, previously with the Bureau of Land Acquisition, and W. Carl Richards, Jr., Supervisor of the Zoning Review Division of the Department of Permits and Development Management, have appeared and testified with regard to the requirements of Section 102.4 and its application to lots of record in Swan Point. They opine that since the right-of-way had been previously established in 1925, access approval could and should be permitted, both in accordance with Section 32-4-409 (c) of the B.C.C. and Section 102.4 of the B.C.Z.R. Mr. Rockel pointed out that this situation is common in the neighborhood and exists at the road end of 1st Street through 12th Street in this subdivision.¹ Mr. Richards indicated that his office is not concerned about the 30-foot right-of-way width set out in Section 102.4 of the B.C.Z.R. as the width of Hinton Avenue has been shown on the plat as 15 feet since the 1920’s.

After due consideration of all the testimony and evidence presented, I am persuaded to grant the requested relief. Without variance relief, Lot 12 could not be redeveloped. Obviously,

¹ *See* prior Orders of this Commission, Case Nos. 02-238-A; 04-360-A; 06-297-A; 06-327-SPH, and 08-200-A.

strict compliance with the regulations would create a hardship as the zoning regulations result in a denial of a reasonable and sufficient use of the property. *See, Belvoire Farms v. North* 355 Md. 259 (1999). Moreover, based on the testimony and evidence presented, the Petitioner is entitled to his variances as he has met the requirements of Section 304 of the B.C.Z.R. *See, Mueller v. People's Counsel for Baltimore County* 177 Md. App. 43 (2007). In my view, the relief requested will not result in any detriment to the health, safety and general welfare of the surrounding locale and, therefore, would meet the spirit and intent of Section 307 for relief to be granted. The proposed dwelling will be situated on the lot consistent with other homes in this community. Building elevations will be submitted to the Office of Planning for approval prior to the issuance of a building permit. Moreover, the proposed development is consistent with others in the neighborhood where access to the homes is provided in a similar fashion and will not adversely impact adjacent properties or the surrounding locale. Thus, I am persuaded that the relief requested is appropriate in this instance and should, therefore, be granted.

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 13th day of November 2009 that the proposed access to Lot 12, as shown on Petitioner's Exhibit 1, is not in conflict with Section 102.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), and, as such, the relief requested in the Petition for Special Hearing, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the B.C.Z.R. to permit a side yard setback of 8 feet in lieu of the required street side setback of 25 feet and a lot width of 50 feet in lieu of the required 55 feet for a single-family dwelling, be and is hereby GRANTED, subject to the following restrictions:

1. The Petitioner is made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from the date of this Order has expired. If for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Compliance with Chesapeake Bay Critical Area (CBCA) regulations and Federal Flood Insurance Regulations, pursuant to the Zoning Advisory Committee (ZAC) comment submitted by the Department of Environmental Protection and Resource Management (DEPRM), dated September 29, 2009, and the Bureau of Development Plans Review (DPR), dated September 21, 2009, and all other appropriate environmental, floodplain and B.O.C.A. regulations relative to the protection of water quality, streams, wetlands and floodplains. Copies of those comments are attached hereto and made a part hereof.
3. The Petitioner shall submit to the Office of Planning for review and approval, prior to the issuance of any building permit, architectural elevation drawings to determine that they are compatible with the size, scale and design of the dwellings in the neighborhood.

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

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

WJW:dlw