

IN RE: **PETITIONS FOR SPECIAL HEARING ***
AND VARIANCE

S/S Ivy Hill Road, 3,300' NE c/line of * BEFORE THE
Falls Road ZONING COMMISSIONER

(1320 Ivy Hill Road) * OF

8th Election District * BALTIMORE COUNTY

3rd Council District *

David D. Smith * **Case No. 2010-0092-SPHA**
Petitioner *

* * * * *

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 property, David Smith, through his attorney Arnold Jablon, Esquire. The Petitioner requests a special hearing to confirm that a single family home can be built on an existing lot pursuant to Section 1A03.4B.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), subject to the standards as prescribed and in force at the time of the subject lot's recordation. In addition, variance relief is requested¹ to permit an existing lot with an area of 2.687 acres of R.C.4 land in lieu of the required three (3) acres, pursuant to B.C.Z.R. Section 1A03.4B.1a. 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 on behalf of the Petitioner were Arnold Jablon, Esquire, Venable, LLP, and Geoffrey Schultz, a professional land surveyor with McKee & Associates, Inc., the consultant who prepared the site plan. Mr. Schultz has been recognized and accepted as an expert witness in land use, zoning and development

¹ At the suggestion of the Zoning Review Office and out of an abundance of caution, Petitioner requested variance relief from the requirements of the Zoning Regulations in the event this relief is determined to be *necessary* by this Commission during the course of the hearing.

management before this Commission and was accepted by the undersigned as an expert in the instant matter. There were no adverse Zoning Advisory Committee (ZAC) comments received from any of the County reviewing agencies, however, it should be noted that while the Office of Planning (OP) did not oppose the requested relief, the comment indicated the subject property's zoning classification as R.C.5 and requested that there should be compliance with the performance standards delineated for the R.C. 5 zone, specifically, Section 1A04.4 of the B.C.Z.R. *See* OP comment, dated November 12, 2009. However, clearly, this was a mistake as the subject relief is requested for property zoned R.C.4 and, therefore, not subject to performance standards.² Appearng as an interested adjacent property owner who would be in opposition to the removal of mature trees from this totally forested site was Ann Yellott, residing at 1332 Ivy Hill Road. There were no other Protestants or interested persons in attendance.

Testimony and evidence offered revealed that the relief requested involves an existing lot of record, comprised of 3.199 acres in area, 2.687 acres of which is zoned R.C.4 and 0.512 acres zoned R.C.5. The subject property is a rectangular shaped parcel and as illustrated on the site plan is landlocked with no access onto Ivy Hill Road. Access to the property would be by a 30-foot wide private use-in-common ingress, egress, maintenance and utility easement driveway from Ivy Hill Road through the Petitioner's adjacent property, as described on the site plan.

Surrounding the subject property, to the southeast, is a separately described lot of record, owned by the Petitioner, of approximately 3.7 acres, identified on the site plan as 1318 Ivy Hill Road; to the south is property owned by Kinloch N. Yellott, Jr. and Ann L.B. Yellott, who

² There is shown on Petitioner's Exhibit 1 a building envelope for a "future house" on adjacent property also owned by the Petitioner, identified on the site plan as 1318 Ivy Hill Road. This separate and distinct lot of record is also split zoned, R.C.4 and R.C.5. The future house referred to on the site plan for 1318 is within the R.C.5 portion of this property. It is easy to understand how the Office of Planning, when it reviewed the subject site plan in preparation of its comment, could mistake the "future house" on the adjacent property for the proposed home on the subject property. Both properties are immediately adjacent to each other and located on the north side of Ivy Hill Road, east of Falls Road.

appeared and participated at the hearing; to the west is property owned by Cresap, LLC; to the north is property owned by Robert Shaine Gahan and Arleen H. Gahan; and to the northeast is property owned by Baltimore County – in an area that has justifiably earned a reputation as being one of the finest residential sections in the metropolitan area.

The site plan (Petitioner's Exhibit 1) describes the subject property and demonstrates the zoning line bisecting the lot. A proposed house is to be located entirely within the R.C.4 zoning classification. The property is not proposed for subdivision and is not part of any subdivision. It was created by deed, dated September 26, 1955, and recorded among the Land Records of Baltimore County in Liber 2814, Folio 504. *See* Petitioner's Exhibit 2. The metes and bounds of this lot have not changed. The issues before the Commission for determination are whether there is a minimum lot size in the R.C.4 zone, or is the property exempt through a regulation exception from current standards and, therefore, subject to the standards *prescribed and in force at the time of the lot's recordation*. Concomitant with these issues is - if there is a minimum lot size - does the Petitioner need a variance?

The petition for variance is to permit the 2.687 acres of the instant property zoned R.C.4 in lieu of the three (3) acres, if applicable. This petition was filed at the direction of the Zoning Office, which believes a three (3)-acre minimum lot size within the R.C.4 is required by Section 1A03.4B.1a of the B.C.Z.R. As an alternative, the Petitioner filed a petition for special hearing to request confirmation that, pursuant to Section 1A03.4B.4 of the B.C.Z.R, the property is subject to the zoning standards in place at the time the property was created and the deed recorded.³ A brief historical review of the zoning history is instructive and was presented by

³ The subject lot as earlier noted is 3.199 acres in size. The Zoning Review Office is apprehensive in construing the intent of the Baltimore County Council when it enacted Section 1A03.4B of the B.C.Z.R. and adopted the language therein. *See* Zoning Case 07-359-SPHA where the Zoning Review Office required a public hearing on the same issues as presented here. Hence, I will try harder to bring clarity to the issues.

Messrs. Jablon and Schultz. Their testimony confirmed that in 1955, when this lot was recorded, the property was not zoned. The Zoning Office assigned the zoning classification of R-40 to all property that was not zoned. R-40 required a minimum lot size of 40,000 square feet, or approximately one acre. In 1971, the property was zoned RDP, which had a one (1)-acre minimum lot size. In 1976, the lot was rezoned to R.C.5 and at that time a minimum lot size of one (1) acre was also required. In 2000, the property was rezoned and split between the R.C.5 and R.C.4 zoning, which is the current zoning. *See* Devolution of Title – Petitioner’s Exhibit 3.

The Petitioner was told by the Zoning Office that the zoning regulations require a three (3)-acre minimum lot size in the R.C.4 zone, and, inasmuch as the subject property has only 2.7 acres of area in the R.C.4, a variance is necessary. Therefore, instant petitions followed.

Mr. Jablon presented the relevant regulations and argued that if there were a minimum lot size required, it would be one (1) acre, not three (3). Section 1A03.4B.1 of the B.C.Z.R., provides as follows:

1. Lot Density.

- a. “A tract to be *developed* in an R.C.4 Zone with a gross area of less than six acres may not be *subdivided*, and a tract to be developed with a gross area of at least six acres but not more than 10 acres may not be subdivided into more than two lots (total), each of which must be at least three acres, except as otherwise provided in Section 103.3 or in Paragraph 4 below.”
- b. (2) All of the remaining permitted density shall be located in the building area on lots with a minimum lot size of one acre.”

In support of the requested relief, Mr. Jablon proffered, and Mr. Schultz confirmed, that the property is not six (6) acres and is not being subdivided. The three (3)-acre minimum lot size required by Section 1A03.4B.1.a is only to a tract with a gross area of six (6) acres to (ten) 10 acres that if subdivided must have no more than two (2) lots, each at least three (3) acres. Lots

less than six (6) acres can't be subdivided but there is no minimum lot size required, thus no variance is needed here. B.C.Z.R. Section 1A03.4B.2, however, as noted above, is the catch-all provision: *all of the remaining permitted density* requires a minimum lot size of one (1) acre. The instant property is not subject to Section 1A03.4B.1a, but more appropriately to Section 1A03.4B.1.b(2).

Mr. Jablon, in the alternative, presented in the petition for special hearing that the instant property is subject to Section 1A03.4B.4, which provides as follows:

"Exceptions for certain record lots. Any existing lot or parcel of land with boundaries duly recorded among the land records of Baltimore County with the approval of the Baltimore County Office of Planning on or before December 22, 1975, and not part of an approved subdivision that cannot meet the minimum standards as provided within the zone, may be approved for residential development in accordance with the standards prescribed and in force at the time of the lot recordation."

Mr. Jablon next made a brief overview of the development provisions in place in 1955 when the subject property was recorded in the land records. He argued that by its recordation, the recordation itself constituted approval by the County's Office of Planning. As this lot was not part of an approved subdivision, it is subject to the standards then in place. As is more particularly set forth below, I find it not necessary to determine the applicability of Section 1A03.4B.4.

Mr. Jablon proceeded to provide testimony to meet the provisions of B.C.Z.R. Section 307.1 in the event this Commissioner should conclude that a three (3)-acre minimum lot size is required. To this end, he proffered and Mr. Schultz agreed, giving reasons that the subject property is unique in nature and there would be a practical difficulty if the variance were not granted.

Ms. Yellott testified that she and her husband have lived at 1332 Ivy Hill Road since 1973 and own five (5) acres adjacent to the proposed building lot. Her principal concern is the cutting down of trees that exist on the property. It is a beautiful area and the removal of the trees to develop this property even for a single family home will be detrimental to her property and view shed as well as the area. Mr. Shultz aptly pointed out that of the 2.7 acres, more or less, within the R.C.4 zone, two (2) acres are protected and in a forest buffer easement. Additionally, Mr. Jablon indicated that his client, David Smith, is an ardent environmentalist and will not disturb environmental resources indiscriminately.

There is no doubt that there exists a practical difficulty not created by the Petitioner. The lot is landlocked, was created in 1955 prior to the adoption of current zoning regulations, is not the subject of a subdivision, and would be undevelopable unless the variance were to be granted. Mr. Schultz testified that it was his opinion that there would be no adverse impact on the community if the variance were to be granted and there would be no detriment to the health, safety or general welfare of the locale. Mr. Schultz stated that it was his opinion that the strictures of Section 307.1 were satisfied and that a practical difficulty would exist if the variance was to be denied. As set forth below, I shall find it is also not necessary to decide this issue.

Considering all the testimony and the evidence presented, I find that the request for a variance of 2.67 acres, more or less, in lieu of three (3) acres is not necessary. The instant lot of record was created in 1955, is not six (6) acres, has not been subdivided and is not the subject of a subdivision. Therefore, Section 1A03.4B.1.a is not applicable. Section 1A03.4B.1.b(2) is. This lot is thus in conformity. Based on the particular facts presented, I conclude that the lot size of 2.687 acres in the R.C.4 zone satisfies the zoning regulations and conforms to all standards prescribed therein.

Therefore, I find that the petition for special hearing shall be dismissed as moot; and, further, I likewise find that the petition for variance shall be in part dismissed as moot and in part granted.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, I find that the petition for special hearing shall be dismissed as moot; and further that the petition for variance shall be dismissed as moot in part and granted in part in that I find that the subject property is not required to have a three (3)-acre minimum in the R.C.4 zone and Section 1A03.4.B.1.a of the B.C.Z.R., is not applicable, and the lot as described on the site plan submitted and identified as 1320 Ivy Hill Road, satisfies and conforms to the Baltimore County Zoning Regulations.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 7th day of December 2009, that the Petition for Special Hearing requesting confirmation that a single family home can be built on the existing lot pursuant to Section 1A03.4B.4 shall be DISMISSED AS MOOT; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 1A03.4B.1.a of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing lot of record with an area of 3.199 acres [2.687 acres of which are zoned R.C.4], is in part DISMISSED AS MOOT and in part GRANTED; and

IT IS FURTHER ORDERED that the Petitioner's request that a single family home can be built on the existing lot, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following:

1. Petitioner may apply for a building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at his own risk until the 30-day appeal

Any appeal of this Order shall be taken in accordance with Baltimore County Code
Section 32-3-401.

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