

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
SE/Side Island View Road, 1,050' W of	*	ZONING COMMISSIONER
Barrison Point Road		
<b>(2499 Island View Road)</b>	*	OF
15 <sup>th</sup> Election District	*	BALTIMORE COUNTY
6 <sup>th</sup> Council District		
	*	
David M. Donovan		
Petitioner	*	<b>Case No. 2010-0123-SPHA</b>

\* \* \* \* \*

**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 David M. Donovan, property owner. The Petitioner is requesting a special hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve the construction of a new residence on an existing lot of record and confirm that the overall density of the surrounding neighborhood is not affected. The variance requested is filed pursuant to B.C.Z.R. Sections 1A04.3.B.2.b and 301.1.A of the B.C.Z.R., to approve a front setback of 45 feet from the centerline of the street or road and side setbacks (north and south side yards) of 21 feet and 21 feet in lieu of the required 75 feet, 50 feet, and 50 feet, for a new dwelling, and to permit a front setback of 35 feet and a side setback of 16 feet (south side) in lieu of the required 56.5 feet and 37.5 feet for an open deck<sup>1</sup>. The subject property and requested relief are more particularly described on the amended site plan submitted and variance petition submitted, which were accepted into evidence and marked as Petitioner's Exhibits 1A and 1B, respectively.

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<sup>1</sup> The variance petition and site plan were amended by Central Drafting & Design, Inc. and submitted without objection at the outset of the hearing in response to changes requested by the Department of Environmental Protection and Resource Management (DEPRM). See DEPRM's Zoning Advisory Committee (ZAC) comment prepared by Paul Dennis, dated November 10, 2009.

Appearing at the requisite public hearing in support of the requests were David M. Donovan, property owner, James S. Brown, and David Billingsley, of Central Drafting & Design, Inc., the consultant who prepared the site plan(s) and is assisting the Petitioner in the permitting process. Appearing as a concerned adjacent property owner and neighbor was James L. Grace, 2500 Island View Road. There were no Protestants or other interested persons present.

Testimony and evidence offered disclosed that the property under consideration is a rectangular shaped (70' x 210') lot of record, identified as Lot 37 on Maryland Department of Assessments and Taxation Map 105, featuring water views of Browns Creek and located at the southern terminus of a "paper road" known as Island View Road in the Barrison Point subdivision of eastern Baltimore County. The property contains a gross area of 9,900 square feet (0.227 acres), more or less, zoned R.C.5 and is heavily forested and unimproved. As is often the case with older subdivisions, the Amended Plat of Barrison Point was laid out many years ago (1926), well prior to the adoption of the zoning regulations in Baltimore County. Thus, all of the lots in the neighborhood are undersized and do not meet current area and width requirements. As shown on the site plan, the western boundary of the lot has 70 feet of frontage on Island View Road shown as a paper road on the site plan and all the land to the south of the southern boundary is vacant and undeveloped land zoned R.C.20, and there would be no impact on anyone in this direction. See Petitioner's Exhibit 8, the aerial photograph of the area. The subject property has been in the Petitioner's name since 2008 but had previously been owned by William R. Porter, who at one time held title to many of the surrounding lots in this locale. See deed history – Petitioner's Exhibit 3. Mr. Donovan now desires to develop the property with a three-story dwelling (28' wide x 40' deep) with an attached deck that will surround the front and south sides of the new home. Elevation drawings were submitted as Petitioner's Exhibit 7 illustrating this detail. In that the R.C.5 development regulations require a minimum 50-foot

setback to any property line and this property is only 70-feet wide at the front and rear property lines - the lot is undersized by today's standards and the requested variance relief is necessary.

Moreover, at DEPRM's insistence, the dwelling was moved closer to the Island View Road which generated Petitioner's amended request to add the setback of 45 feet from the centerline of the road as opposed to the 75 feet shown on the plan that accompanied the petition, dated May 12, 2009. DEPRM's ZAC comment in this regard states in pertinent part:

“ . . . Impacts need to be minimized to the greatest extent possible to try to meet the (Chesapeake Bay Critical Area) requirements. It is recommended that the relief be revised to request that the required *front yard setback be reduced to locate the proposed dwelling as close as possible to Island View Road . . . .*” to protect existing forest that covers the eastern half of the Petitioner's property.

In support of the request, testimony indicated that the proposed dwelling would be consistent with other homes in the community and feature similar setbacks as some of the other homes on Island View Road. *See* photographic exhibits 6A thru 6D. Again, it bears repeating that the subject lot is at the dead end of Island View Road mitigating any adverse visual impact by moving the proposed dwelling further to the west and closer to the right-of-way.

James L. Grace, the adjacent neighbor, who attended and participated, and arguably the most affected, had no objection to the amended relief requested. He confirmed the lots are heavily wooded and the improvements won't be seen from each other's homes. The clear tenor of his remarks concern access/utilities that presently serve his home on Lot 26. The existing paved road traverses through Lots 21 through 25 before reaching his property, rather than being located in the right-of-way shown on the site plan as Island View Road. Mr. Grace produced as an acceptable alternative for his access/utilities a redlined site plan demonstrating how his access/utilities can reach his home should the existing functioning operation be terminated in the future. James Brown and David Donovan jointly own the adjacent lots, 34-36, on the northeast

side as improved with a single-family dwelling known as 2501 Island View Road. There are no impacts from that perspective.

I find that no increase in residential density beyond that otherwise allowable by the Zoning Regulations will result by granting these variances when looking at the overall neighborhood density including the Barrison Point subdivision. The variances can be granted in strict harmony with the spirit and intent of the regulations. There are at least eight (8) other variance cases in the area<sup>2</sup> in which homes have been permitted on undersized lots. Many are built on 50-foot wide lots. This home will be built on a 70-foot wide lot. This will not adversely affect the pattern of development of the neighborhood.

After due consideration of the testimony and evidence presented, I find that the proposed home in the location depicted on Petitioner's Exhibit 1 is in keeping with the homes in the area and meets the spirit and intent of Section 307 for variance relief to be granted. It is clear that strict compliance with the regulations would result in practical difficulty for the Petitioner and prevent improvements of the property for a permitted purpose. Moreover, there were no adverse Zoning Advisory Committee (ZAC) comments submitted by any County reviewing agency. Thus, I find that relief can be granted without detrimental impact to the health, safety, or general welfare of the surrounding locale. However, due to the property's close proximity to Browns Creek, the proposed improvements must comply with Chesapeake Bay Critical Area (CBCA) regulations as set forth in the attached ZAC comments submitted by the Department of Environmental Protection and Resource Management (DEPRM).

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.

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<sup>2</sup> Records maintained by this Commission disclosed zoning relief granted for lots on Island View Road adjacent to Browns Creek as follows: Case Nos. 1994-0015, 2002-0472, 2002-0962, 2004-0259, 2005-0690, 2006-0062, 2008-0303 and 2008-0596.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 13<sup>th</sup> day of January 2010 that the Petition for Special Hearing to approve the construction of a new residence on an existing lot of record and a determination that density is not affected, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance requesting relief from Sections 1A04.3.B.2.b and 301.1.A of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve a front setback of 45 feet from the centerline of the street or road and side setbacks (north and south side yards) of 21 feet and 21 feet in lieu of the required 75 feet, 50 feet, and 50 feet, for a new dwelling, and to permit a front setback of 35 feet and a side setback of 16 feet (south side) in lieu of the required 56.5 feet and 37.5 feet for an open deck, in accordance with Petitioner's Exhibit 1A, be and is hereby GRANTED, subject to the following restrictions:

1. A building permit for the new single-family dwelling on Lot 37 shall not be issued until public water and sewer is available and operational.
2. The Petitioner may apply for any other permits 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 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. Compliance with the Chesapeake Bay Critical Area (CBCA) regulations and the Limited Development Area (LDA) requirements and all other appropriate environmental, floodplain and B.O.C.A. regulations relative to the protection of water quality, streams, wetlands and floodplains. A copy of this comment, dated November 27, 2009, is attached hereto and made a part hereof.
4. In addition to Condition No. 1 above, the Petitioner shall submit building elevation drawings to the Office of Planning for review and approval prior to the issuance of the building permit to ensure that the proposed house is compatible with existing homes in the area.
5. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

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