

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
NW/Side Island View Road, 860' W of	*	ZONING COMMISSIONER
Barrison Point Road		
(2500A Island View Road)	*	OF
15 th Election District	*	BALTIMORE COUNTY
6 th Council District		
	*	
David M. Donovan & James S. Brown		
Petitioners	*	Case No. 2010-0145-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 David M. Donovan and James S. Brown, property owners. The Petitioners are 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 dwelling on existing lots of record and a confirmation that density is not affected. The variance requested is filed pursuant to B.C.Z.R. Section 1A04.3.B.2.b, to permit a setback of 45 feet from the centerline of a street or road in lieu of the required 75 feet for the new dwelling. The subject property and requested relief are more particularly described on the amended redlined site plan¹ submitted, which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requests were David M. Donovan, James S. Brown, property owners, and David Billingsley, of Central Drafting & Design, Inc., the consultant who prepared the site plan(s) and is assisting the Petitioners in the permitting process. There were no Protestants or other interested persons present.

¹ Petitioners amended their site plan at the onset of the hearing, without objection, to respond to the Zoning Advisory Committee (ZAC) comment received from Dennis A. Kennedy, P.E., on behalf of the Department of Public Works. See Bureau of Development Plans Review comment, dated January 6, 2010, regarding driveway access, sewer and water connections for the property and improvements at 2500 Island View Road owned by James L. Grace, et ux.

Testimony and evidence offered revealed that the property, which is the subject of this variance request, consists of three (3) unimproved lots of record, identified as Lots 21, 22 and 23 on the Amended Plat of Barrison Point. The lots are located on the north side of Island View Road with frontage on the south and east sides of Browns Creek in eastern Baltimore County. The Petitioners, who have lived in the community since 1992, are interested in constructing a 42' x 24' dwelling on the property. In order to proceed with the construction of a home, the setback variance from the centerline of the road (a paper street) is necessary, given that the property is now zoned R.C.5. It should be noted that this community was developed and designed at a time when houses could easily be constructed on these lots without the need for a variance. However, the subject community has been rezoned to R.C.5, which necessitates the variance request. The home would be centrally located on the lots, each being 50-foot wide, having a combined area of 18,896 square feet (0.434 acres) in lieu of the 1.5 acres now required. The special hearing is to approve the density and confirm the overall density of the neighborhood is not affected.

The lots have the potential to have access to public water and sewer via grinder pump. Mr. Billingsley testified that Lots 21, 22 and 23 are wooded with no improvements or connections other than an existing macadam driveway that traverses (east to west) to Lot 26 known as the Grace property.² He noted that many homes in the neighborhood are built on 50-foot wide lots so that a new home on the proposed lots would have less density than others in the neighborhood. Mr. Billingsley further noted that R.C.20 zoned property is located just south of Island View Road and is undeveloped and that there would be no impact on anyone in this

² This road is the sole access to the Grace property. The road also contains a water main and pressure sewer – with the proposed new home being shown on the site plan as located over the water main – that serves the Grace property. The location of this road and utilities are in dispute. Petitioners assert the County inadvertently paved the old existing driveway that ran across their property rather than placing the public improvements in the “paper street” of Island View Road. As stated during the hearing, I cannot determine the ownership of real property as that determination is vested solely in the Circuit Court.

direction. He also supplied photographs of houses in the neighborhood showing the new home would be compatible with the pattern of development. *See* Exhibit 6. In that the R.C.5 development regulations require a minimum 75-foot setback from the centerline of any street or road, the requested variance relief is necessary. *See* B.C.Z.R. Section 1A04.3B.2.b. The requested relief is also driven by the Department of Environmental Protection and Resource Management's (DEPRM) insistence that the dwelling be moved closer to Island View Road. The Zoning Advisory Committee (ZAC) comment received from David Lykens, DEPRM's Development Coordinator, confirms that tidal wetlands exist in front of the proposed dwelling and in order to minimize to the greatest extent possible in trying to meet the Chesapeake Bay Critical Area (CBCA) requirements, it is their recommendation that the required setback be reduced to locate the proposed dwelling as close as possible to Island View Road in order to protect the critical area buffer.

I find special circumstances or conditions exist that are peculiar to the land which is the subject of the variance request. These lots were created many years before the R.C.5 regulations were imposed and as such, are impacted differently from lots in the area created after the resource conservation regulations began. I also find strict compliance with the County's Zoning Regulations would result in practical difficulty or unreasonable hardship. There is no land available to increase the area of any of the subject three (3) lots. Given the need to meet the Critical Area law, the new home cannot practically meet the 75-foot centerline setback requirement. I find that no increase in residential density beyond that otherwise allowable by the Zoning Regulations will result by granting this variance when looking at the overall neighborhood density including the large R.C.20 area to the south. Finally, I find this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public, health, safety and general welfare. There

are at least nine (9) other variance cases in the area in which homes have been permitted on undersized lots.³ Many are built on 50-foot wide lots. This new home will be built on a 150-foot wide lot. This will not adversely affect the pattern of development in this neighborhood. However, due to the properties close proximity to Browns Creek and the ongoing dispute concerning the location of the existing paved road, a number of restrictions are appropriate here. Pursuant to Section 307.1 of the B.C.Z.R., the Zoning Commissioner is empowered to impose restrictions for the protection of the surrounding and neighboring properties. Those conditions are set forth below.

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 26th day of April 2010 that the Petition for Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.). to approve the construction of a new dwelling on existing lots of record and a confirmation that density is not affected, be and is hereby granted; and

IT IS FURTHER ORDERED that the Petition for Variance requesting relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a setback of 45 feet from the centerline of a street or road in lieu of the required 75 feet for a new dwelling, in accordance with Petitioners' Exhibit 1, be and is hereby granted, subject to the following restrictions, which are conditions precedent to the relief granted herein:

³ 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, 2008-0596 and 2010-0123.

1. A building permit for the new single-family dwelling on combined Lots 21, 22, and 23 to be known as 2500A Island View Road shall not be issued until the “proposed driveway, water house connection and sewer house connections”, illustrated on Petitioners’ Exhibit 1, are available for operation at 2500 Island View Road.
2. Compliance with the Zoning Advisory Committee (ZAC) comments submitted by the Department of Environmental Protection and Resource Management (DEPRM) and the Development Plans Review (DPR) of the Department of Permits and Development Management (DPDM) relative to the Chesapeake Bay Critical Area (CBCA) regulations 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, both dated April 21, 2010 respectively, have been attached hereto and are made a part hereof.
3. In addition to Condition No. 1 above, Petitioners 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 42' x 24' house is compatible with homes in this area.
4. 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