

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
E/S St. Georges Road, 822' S of c/line of		
Middleborough Road	*	ZONING COMMISSIONER
<b>(329 St. Georges Road)</b>		
15 <sup>th</sup> Election District	*	OF
6 <sup>th</sup> Council District		
	*	ZONING COMMISSIONER
Steven Patrick Newton		
Petitioner	*	<b>Case No. 2010-0235-A</b>

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Steven P. Newton. The Petitioner requests variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a replacement dwelling with side yard setbacks of 11 feet and 22 feet total side yard setback in lieu of the 14 feet and 25 feet required on a lot with a width of 50 feet in lieu of the required 70 feet.<sup>1</sup> The subject property and requested relief are more fully described on the site plan submitted which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the request were Steven Newton, owner of the property, Rick Richardson, the professional engineer who prepared the site plan, Paul Nalley, the builder with Residential Builders, and Chuck Meyer, who is assisting the Petitioner through the permitting process. There were no Protestants nor were there any adverse comments from any of the County’s reviewing agencies.

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<sup>1</sup> The subject property is a water-oriented lot with 50 feet of frontage at the wooden bulkhead and pier on Norman Creek and a width of 50 feet on St. Georges Road. The applicable development standards for small lots set forth in the Chart found in Section 1B02.3.C.1, in addition to area and yard setbacks, require a lot width of 70 feet in the D.R.3.5 zone. Perhaps the Zoning Review Office preferred a public hearing rather than place its reliance upon B.C.Z.R. Section 304.1 (undersized single-family lots). The subject property, Lot 176 in the subdivision of Middleborough has been a lot of record since 1916, meets all height and area requirements and Mr. Newton does not own sufficient adjoining land to conform to the width requirements.

Testimony and evidence offered disclosed that the subject property is a rectangular shaped parcel located on the east side of St. Georges Road just west of Middleborough Road in eastern Baltimore County. As noted, the property is also known as Lot 176 in the subdivision of Middleborough, an older subdivision which was recorded in the Land Records of Baltimore County some 97 years ago, well prior to the effective date of the zoning regulations. *See* Petitioner's Exhibit 3 – the recorded plat. The property contains a gross area of 12,950 square feet or 0.297 acres, more or less, zoned D.R.3.5 and is presently improved with three (3) single-family dwellings built in 1940 and several out buildings. As is often the case with older subdivisions, many of the lots do not meet current width requirements. In this regard, the subject property is 50 feet wide and 290 feet deep and cannot meet current lot width requirements,<sup>2</sup> however, is served by public water and sewer. Mr. Richardson submitted as Exhibits 4, 5 and 6 the Deeds he obtained in his title search verifying that there has never been a prior owner who owned adjoining land that would have allowed the subject lot to conform to the current zoning requirements. He points to B.C.Z.R. Section 4A03.4B.1 and 3 that would allow a building permit to be issued for the construction of a dwelling on this undersigned lot.

Variance relief is requested as set forth above to allow the redevelopment of the subject property with a two-story, single-family dwelling with setbacks consistent with other development in the neighborhood as demonstrated by the building elevations submitted as Petitioner's Exhibit 7. Mr. Newton has owned and resided on the property since 2004. He stated he wants to do the right thing – by removing the three (3) one-story dwellings – and building the proposed house with a design in keeping with the character of other newer homes in the community. The new home will be set back 92 feet from bulkhead and positioned centrally on

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<sup>2</sup> A minimum width of 70 feet is required.

the lot with side yard setbacks (11 feet each side) so as to provide setback distances consistent with other homes in the locale.

As shown on the site plan, the current structures are as close as 5 feet from the property lines. The proposed house will be 28' wide x 40' deep and 30' high with a 62 square foot covered porch. The adjacent property owners, Dolores C. Novak and Joann M. Eliopoulos (north side) and Stanley J. and Rose M. Lukasevich (south side) support the proposal. The Office of Planning has no objection to the variance request and points out in the Zoning Advisory Committee (ZAC) comment, "The applicant is razing several existing structures and building a new 2-story dwelling. The proposed house has a smaller footprint than the existing houses to be removed. The existing pattern in the neighborhood is of similar 50' wide lots." In view of the narrow configuration and size of the lot, compliance with the regulations is not practical or possible. Additionally, the property is located in the Limited Development Area (LDA) of the Chesapeake Bay Critical Area (CBCA) which requires that the proposed development must comply with these regulations and, in particular, the Buffer Management Area controls. Thus, variance relief is requested in order to comply with the spirit and intent of these regulations.

Based upon the testimony and evidence presented, I am persuaded to grant the requested relief. In my judgment, the Petitioner has satisfied the requirements of Section 307 of the B.C.Z.R. and *Cromwell v. Ward*, 102 Md. App. 691 (1995). The variance in this case is driven by the configuration and size of the lot. Moreover, this property is served by public water and public sewer, which has been made available in the area. Strict compliance with the regulations would cause a practical difficulty upon the Petitioner in that a reasonable use of the land would not be permitted. He is correcting a non-conforming three (3) dwelling use on a single lot that presently impacts negatively upon adjacent owners. Thus, I find that relief can be granted

without detrimental impact to their property. It is noted that many other houses in the community are built on similarly sized lots. *See* aerial photo – Petitioner’s Exhibit 2. However, in granting the relief, I will impose conditions and remind Petitioner that he needs to comply with the CBCA regulations enforced by the Department of Environmental Protection and Resource Management (DEPRM) and with Federal flood insurance requirements mandated in the CBCA.

Pursuant to the advertisement, posting of the property and public hearing on this Petition 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 20<sup>th</sup> day of April 2010 that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet, and a minimum sum of side yard setbacks of 22 feet in lieu of the required 70 and 25 feet, respectively, in accordance with Petitioner’s Exhibit 1, be and the same is hereby GRANTED; subject to the following restrictions:

1. The Petitioner may apply for his 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 thirty (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.
2. Compliance with the Zoning Advisory Committee (ZAC) comments submitted by DEPRM and the Development Plans Review Division 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 BOCA regulations relative to the protection and water quality, streams, wetlands and floodplains. Copies of these comments, dated April 12, 2010 and March 17, 2010, respectively, have been attached hereto and made a part hereof.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code (B.C.C.).

\_\_\_\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner for  
Baltimore County