

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
S/S Catanna Avenue, 320' E of c/line of	*	ZONING COMMISSIONER
Jeanne Avenue		
(1954 Catanna Avenue)	*	OF
1 st Council District		
13 th Election District	*	BALTIMORE COUNTY
Lawrence Leroy McConkey, Sr., <i>Legal Owner</i>	*	
Gilbert M. France, et al, <i>Contract Purchasers</i>		
<i>Petitioners</i>	*	Case No. 2010-0252-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, Lawrence L. McConkey, Sr., and the contract purchasers, Joseph France and his brother, Gilbert M. France, builders t/a G&T Professional, LLC. 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. In addition, variance relief is requested from Sections 1B02.3.C.1 and 300.1, to permit a proposed dwelling to have a front yard setback of 30 feet in lieu of the required 40 feet, side yard setbacks of 10 feet and a combination of 20 feet in lieu of the required 15 feet and 40 feet, respectively, a lot width of 60 feet in lieu of the minimum 100 feet, and an area of 6,600 square feet in lieu of the minimum 20,000 square feet; and to permit an open projection (porch) to have a front yard setback of 25 feet in lieu of the minimum required 30 feet. 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.

¹ Petitioners amended the site plan at the onset of the hearing, without objection, to respond to the Zoning Advisory Committee (ZAC) comment received from Dennis Wertz, on behalf of the Office of Planning, dated April 21, 2010. The redlined amendments provide detail of the 4' x 8' front porch, off-street parking location and clarification that the proposed improvements will not be positioned any closer to Catanna Avenue than the adjacent dwelling at 1952 Catanna Avenue (Lots 25, 26 and 27).

Appearing at the requisite public hearing in support of the requests were Lawrence McConkey, property owner, and Gilbert and Joseph France, the contract purchasers. Appearing as a concerned adjacent property owner was Edward W. Schilling, Jr., who has resided with his family at 1952 Catanna Avenue since November 1990. There were no other interested persons present.

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 22, 23, and 24 (Block G) on the Plat of Halethorpe Terrace as recorded in Baltimore County Plat Book 7, Folio 72. The lots are located at the southeast end of Catanna Avenue not far from Washington Boulevard in western Baltimore County. Each lot is 20' wide x 110' deep forming a rectangular-shaped parcel. The property contains a gross area of 6,600 square feet (0.1515 acres) – 60' wide x 110' deep in dimension. This subject property was part of the Comprehensive Zoning Map Process (CZMP) Issue 1-006 (1996) in which 167 acres, more or less, of the Halethorpe Terrace subdivision were rezoned from D.R.5.5 to D.R.2. The Office of Planning submitted the rezoning petition in an attempt to slow the creation of additional impervious surfaces. In this regard and in an effort to improve the flooding problem, the Department of Public Works, the Office of Community Conservation, the Office of Planning and the Halethorpe Terrace Community Association (Halethorpe Civic League) worked together to develop and implement a plan of action. Briefly, the storm water controls developed by the plan have now been constructed and completed. Mr. Dennis Wertz, the Community Planner for the First Councilmanic District, provided the undersigned with a status report on the Halethorpe community improvements received from Stephen Emm, of the Department of Public Works. Pertinent here are the following completed alterations:

1. Outfall Improvements below Halethorpe Avenue and storm drain improvements at Woodside Avenue
2. Roadway Improvements to Spring Avenue
3. Stream Improvements up to Catanna Avenue
4. Roadway Improvements to Woodside, Leola, Catanna, and Arline

5. Stream Improvements up to Washington Avenue
6. Roadway Improvements to Spencer Street and Northeast Avenue
7. Roadway Improvements to Washington Avenue

Mr. Wertz, through confirmation from Stephen Emm, stated that with these substantial improvements, there was no longer a danger in allowing in-fill development if they are not located within the floodplain. Lots 22 through 24 not located within a floodplain, the Office of Planning recommends that the undersized lot and associated variance request at this location be approved.

The Petitioners, believing they have a buildable lot, come before me seeking approval to develop the subject combined lots with a single-family dwelling. As shown on the site plan, the proposed structure will be a split-level type dwelling known as the Wexford, with dimensions of 40 feet wide and 26 feet deep. The dwelling will be set back 30 feet from the front property line, which is consistent with neighboring dwellings and provide an open 4' x 8' front porch. Variance relief is requested from the front and side yard setback requirements. Ten-foot setbacks will be maintained on both the east and west sides of the property; the sum of side yards will only be 20 feet. Relief is also requested because the three (3) lots, when combined, are undersized. Under the D.R.2 zoning classification², a minimum lot area of 20,000 square feet is required and, as noted above, the lot is only 60 feet wide and 6,600 square feet in area. Testimony and evidence offered in support of the request was that without variance relief, the lot could not be developed. Obviously, 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).

² See B.C.Z.R. Section 1B02.3.C (Chart) D.R.2 zoning classification requires a minimum lot area of 20,000 square feet, minimum lot width of 100 feet, a front yard depth of 40 feet, side yard setbacks of 15 feet with a minimum sum of side yard widths of 40 feet.

Edward Schilling stated that he and his wife, Theresa, as adjacent property owners, will be most affected. Their home, also a split-level dwelling, was built on a similar size lot (6,600 square foot) in 1990 prior to the D.R.2 zoning change. They believe that the Petitioners are trying to take advantage of the County's system and that the variances, if granted, would result in parking congestion and exacerbate the storm water run-off that flows from east to west onto their property. The France's, who have built many homes in this area, disagree, noting that they will provide a swale along the western portion of the subject property directing storm water runoff away from the Schilling's property and out into Catanna Avenue and into storm drains.

Prior to the infrastructure improvements discussed above allowing for in-fill development, there had been several similar zoning requests for this neighborhood. A brief history is appropriate and outlined as follows:

- A petition for variance was filed by Alex Kundrick in Case No. 99-64-A seeking similar relief to permit development of Lots 32 & 33 of Catanna Avenue with a single-family dwelling. Deputy Zoning Commissioner Timothy Kotroco granted relief on October 14, 1998 to allow that site to be developed.
- A second similar petition was filed in Case No. 00-381-A for property known as 1954 Catanna Avenue – Lots 22 – 24. Obviously, although not noted on the site plan submitted, this variance petition filed by Katherine E. Frost, involved the same property now before me. In that case, Mr. Hawkins appeared on behalf of the Halethorpe Civic League and voiced concerns regarding the lack of infrastructure in the area. Deputy Commissioner Timothy Kotroco considered that case and denied the petition for variance on May 5, 2000.

- Next, a third petition was filed in Case No. 01-216-A for Lots 30 & 31 (1946 Catanna Avenue). In that case, Ms. Marguerite P. Pasky wanted to sell her two (2) lots (4,400 square feet) to L. Ray Rachuba to build a 20' x 40' two-story “spec” house on the property. Immediate neighbors, Mr. and Mrs. Readmond and Mr. Swann appeared in opposition. Mr. Hawkins also appeared and shared concerns of the neighbors that the area lacks sufficient infrastructure to permit this in-fill development. Zoning Commissioner Lawrence E. Schmidt considered that case and denied the petition for variance on February 6, 2001.

The Petitioners submitted photographic evidence (Exhibits 2A - 2E) noting homes built prior to the zoning changes in 1996 where homes routinely built on 60-foot wide lots. The Petitioners site plan and the zoning map further disclose that the pattern of development in the immediate neighborhood has taken place on undersized lots, which they say support their request (1921 Halethorpe Avenue, 4115 Old Washington Boulevard, 4119 Old Washington Boulevard, 2026 Northeast, etc.). Moreover, the uncontradicted evidence clearly establishes that there has never been a desire to combine or merge the several lots (Lots 22-24). There is no physical evidence that the subject property was used or consolidated with any other lot to invoke the doctrine of merger as described in *Friends of the Ridge v. Baltimore Gas & Electric Co.*, 352 Md. 645 (1999) and *Remes v. Montgomery Co.*, 387 Md. 52 (2005).

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 D.R.2 Zoning Regulations were imposed to slow the creation of additional impervious surfaces until such time as adequate storm water and sediment controls could be completed to control storm water runoff. These improvements, now complete, these lots are impacted differently from lots in the area

created prior to the 1996 CZMP rezoning. As such, I find strict compliance with the County's Zoning Regulations will result in practical difficulty or unreasonable hardship. There is no land available to increase the area of any of the subject three (3) lots. 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 of this Historical African-American Settlement. 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 have been other variance cases in the area in which homes have been permitted on undersized lots. Many are built on 40-foot wide lots. This new home will be built on a 60-foot wide lot. This will not adversely affect the pattern of development in this neighborhood.

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 19th day of May 2010 that the Petition for Special Hearing, filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to confirm that overall density of the surrounding neighborhood will not be affected, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 1B02.3.C.1 and 300.1 of the B.C.Z.R. to permit a proposed dwelling to have a front yard setback of 30 feet in lieu of the required 40 feet, side yard setbacks of 10 feet and a combination of 20 feet in lieu of the required 15 feet and 40 feet, respectively, a lot width of 60 feet in lieu of the minimum 100 feet, and an area of 6,600 square feet in lieu of the minimum

20,000 square feet; and to permit an open projection (porch) to have a front yard setback of 25 feet in lieu of the allowed 30 feet, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their 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.
- 2) To insure storm water run-off will be conveyed to a suitable outfall without imposing an adverse impact on adjacent properties, I shall impose as a condition to receiving a Use and Occupancy Permit, that Petitioners shall construct a swale along the western side of the property near the proposed driveway location to direct run-off onto Catanna Avenue.

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

WJW:dlw

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