

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NE side of Middletown Road; 2640 feet		
SE of the c/l of Rayville Road	*	DEPUTY ZONING
6 th Election District		
3 rd Councilmanic District	*	COMMISSIONER
(18929 Middletown Road)		
	*	FOR BALTIMORE COUNTY
Clarence H. Ford, Jr.		
<i>Legal Owner</i>	*	
Deborah L. Ford		
<i>Contract Purchaser</i>	*	CASE NO. 2010-0258-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Clarence H. Ford, Jr. and the contract purchaser, Deborah L. Ford. Variance relief is requested from Section 1A03.4.B.2 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a dwelling within 53 feet of the center line of the road in lieu of the required 100 feet. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was the contract purchaser, Petitioner Deborah L. Ford. Also appearing in support of the requested relief was Petitioner’s land use and zoning consultant, Bernadette Moskunas with Site Rite Surveying, Inc., the firm that prepared the site plan. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is irregular in shape and contains 0.792 acre, more or less, zoned R.C.4. As shown on the site plan and the zoning map that was marked and accepted into evidence as Petitioner’s Exhibit 2, the property is located

on the northeast side of Middletown Road, west of Interstate 83 and southeast of Rayville Road, in the Parkton area of Baltimore County, and is improved with a small, one-story dwelling that, according to Petitioner, was built in the 1940's. There is also an existing detached one car garage. Petitioner testified that her brother, Clarence H. Ford, Jr., purchased the property in the 1970's and lived there for a time and also rented out the dwelling. Approximately three years ago, the dwelling caught fire apparently due to faulty and aged electrical wiring, essentially gutting the interior and causing it to be boarded up. Petitioner has also been looking for a home and her brother recommended that she acquire his property and basically "start over" with a new dwelling.

Petitioner was advised by the County's Zoning Review Office that variance relief would be required from Section 1A03.4.B.2 of the B.C.Z.R. This section states that, "[e]xcept for agricultural buildings, any nonresidential principal building hereafter constructed in an R.C.4 Zone shall be situated at least 100 feet from the center line of any street ..." Although this case appears to involve the proposed construction of a new single-family dwelling to replace an existing dwelling and not a nonresidential principal dwelling, the Zoning Review Office advised Petitioner to seek variance relief as indicated above.

In support of the variance relief, Petitioner and her consultant, Ms. Moskunas, explained that Petitioner desires to purchase the subject property in order to raze the existing dilapidated and uninhabitable dwelling and replace it with a new dwelling. Marked and accepted into evidence collectively as Petitioner's Exhibit 3 were photographs of the property and the existing dwelling. The property fronts Middletown Road and the existing structure is situated fairly close to the road. There is also an existing one car garage toward the east side of the property. This structure has paving leading to Middletown Road. In addition, a great deal of paving also exists

adjacent to the garage along the frontage at Middletown Road, shown as a cross-hatched area on the site plan. A rendering of the proposed replacement dwelling was marked and accepted into evidence as Petitioner's Exhibit 4. The proposed dwelling is also depicted on the site plan overlapping the location of the existing dwelling. The rendering shows an attractive 1½-story Cape Cod style dwelling with a front loading two car attached garage. It is also proposed that the existing cross-hatched paving would be removed and replaced with grass and/or landscaping.¹ Finally, Petitioner submitted a copy of the site plan with signatures of the closest affected neighbors indicating their support of Petitioner's proposal, which was marked and accepted into evidence as Petitioner's Exhibit 5.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated April 21, 2010 which indicates that the Office does not object to Petitioner's request. It should be noted that this portion of Middletown Road is a designated scenic route in the Master Plan. A number of conditions are suggested including planting vegetation along the front of the property, using indigenous species, complimenting existing vegetation, and submitting building elevations.

Following the hearing, the undersigned reviewed the applicable Zoning Regulations in concert with the evidence presented and I conclude that no variance is needed or legally required in this matter. As earlier indicated, Section 1A03.4.B.2 of the B.C.Z.R. requires that any *nonresidential principal building* constructed in the R.C.4 Zone be situated at least 100 feet from the center line of any street. (emphasis added). In this case, Petitioner and Ms. Moskunas testified that the proposal in this matter is to raze the existing dwelling and replace it with a new

¹ According to Ms. Moskunas, not only will the removal of the paving be more aesthetically pleasing for the property, but is also required by Wallace Lippincott with the Department of Environmental Protection and Resource Management as part of his review and in order to reduce impervious surfaces. It should be noted that only the paving leading from the existing one car garage to Middletown Road would remain, in addition to a new driveway for the proposed new home, as depicted on the site plan.

single-family dwelling -- clearly to be used by Petitioner as a residence. The site plan, the rendering of the proposed new dwelling, and the Office of Planning's ZAC comments are consistent with that understanding. To that end, Section 1A03.4.B.2 of the B.C.Z.R. states that any *residential principal building* shall be set back twenty-five feet from any building face to a public street right-of-way or property line, and an additional 20 feet for buildings located adjacent to arterial roadways. (emphasis added). The evidence plainly indicates the instant matter involves a request for a residential principal building. Even if Middletown Road were an arterial roadway, the maximum setback requirement would be 45 feet. Here, as shown on the site plan, Petitioner proposes to construct a dwelling with a 53 foot setback.

Perhaps the Zoning Review Office advised Petitioner that she would need a variance for a "nonresidential principal building" due to the zoning history of the property. Specifically, in 1987, the same owner of the property, Clarence H. Ford, Jr., requested special hearing relief for approval of a nonconforming use of a portion of the subject property for a service garage. As contained in the current case file, the previous case's site plan showed a 0.231 acre paved parking area fronting on Middletown Road, including the area in front of the existing garage, that was used by the owner to maintain his vehicles as well as three to four additional vehicles per month owned by friends and neighbors. In Case No. 87-317-SPH, the Deputy Zoning Commissioner granted the relief for a service garage use with certain conditions. This nonconforming use with some commercial overtones, combined with the residential use, may have prompted the Zoning Review Office to require the aforementioned variance in this case out of an abundance of caution; however, after hearing the testimony and evidence regarding Petitioner Deborah L. Ford's plans and proposal for a new residence on the property with no further use of the service garage, I find that no such variance is required. Hence, the Petition

shall be dismissed as moot.²

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners' variance request should be dismissed.

THEREFORE, IT IS ORDERED this 24th day of June, 2010 by this Deputy Zoning Commissioner, that Petitioner's Variance request from Section 1A03.4.B.2 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a dwelling within 53 feet of the center line of the road in lieu of the required 100 feet be and is hereby **DISMISSED AS MOOT**.

1. Petitioners are advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

² Although the Petition is to be dismissed, it is worth noting that based on the testimony and evidence presented at the hearing, I do find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request so as to meet the requirements of Section 307.1 of the B.C.Z.R. The property is certainly unusually shaped and its zoning history and past uses are also unique for the area. I would also find that practical difficulty and undue hardship would befall Petitioner if the variance were not granted, and that the variance relief could be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety, and general welfare.