

IN RE: PETITION FOR VARIANCE

NE side of Homberg Avenue; 1,120 feet
N of the c/l of North Avenue
15th Election District
7th Councilmanic District
(11 Homberg Avenue)

Troy Smith
Petitioner

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* BEFORE THE
DEPUTY ZONING
COMMISSIONER
FOR BALTIMORE COUNTY
CASE NO. 2010-0270-A

IN RE: PETITION FOR VARIANCE

NE side of Homberg Avenue; 1,070 feet
N of the c/l of North Avenue
15th Election District
7th Councilmanic District
(13 Homberg Avenue)

Troy Smith
Petitioner

Neil Stillerman
Contract Purchaser

* * * * *

* BEFORE THE
DEPUTY ZONING
COMMISSIONER
FOR BALTIMORE COUNTY
CASE NO. 2010-0271-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before this Deputy Zoning Commissioner for consideration of Petitions for Variance. In each case number, Petitioner is requesting the following Variance relief:

Case No. 2010-0270-A: For the property located at 11 Homberg Avenue, the legal property owner, Troy Smith, requests Variance relief is as follows:

- From Section 1B02.3.C.1 of the of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a minimum lot width of 50 feet in lieu of the minimum lot width of 55 feet; and

- From Sections 232.2, 302.1, and 1B02.3.C.1 of the B.C.Z.R. to permit a minimum width of individual side yard of 8 feet in lieu of the minimum width of individual side yard of 10 feet; and
- For such other and further relief as may be required.

Case No. 2010-0271-A: For the property located at proposed 13 Homberg Avenue, the legal property owner, Troy Smith, and the contract purchaser, Neil Stillerman, request Variance relief as follows:

- From Section 1B02.3.C.1 of the B.C.Z.R. to permit a minimum lot width of 50 feet in lieu of minimum lot width permitted of 55 feet; and
- For such other and further relief as may be required.

The subject properties and requested relief are more fully described on the redlined site plans which were marked and accepted into evidence as Petitioner's Exhibit 1.¹

Appearing at the requisite public hearing on behalf of the property owner and in support of the variance requests was Jason Vettori, Esquire with Gildea & Schmidt, LLC. Also appearing in support of the relief was Neil Stillerman, the contract purchaser of proposed 13 Homberg Avenue. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the two properties are situated side-by-side at 11 Homberg Avenue and proposed 13 Homberg Avenue, respectively. As depicted on the redlined site plans, 11 Homberg Avenue consists of approximately 8,726 square feet zoned primarily B.L.-A.S. with a small area of D.R.16 near the northeast corner of the property, and proposed 13 Homberg Avenue consists of approximately 8,125 square feet primarily zoned D.R.5.5, also with a small portion of D.R.16 near the northeast corner of the property. Each

¹ The site plans and exhibits for Case No. 2010-0270-A and 2010-0271-A are contained in the respective case files, however exhibit numbers are identical for each case.

property measures approximately 50 feet wide by 149 feet deep. As shown on the vicinity map on the redlined site plans, they are located on the northeast side of Homberg Avenue and north of the centerline of North Avenue in the Essex area of Baltimore County. The properties are located in the middle of a transitional area, with business and commercial uses to the north and corresponding B.L.-A.S., B.M., and B.L. zoning districts, and residential uses to the south and east with corresponding D.R.16 and D.R.5.5 designations. An aerial photograph of the properties was marked and accepted into evidence as Petitioner's Exhibit 4. Both properties have access to public water and sewer services.

The property at 11 Homberg Avenue (Case No. 2010-0270-A) is improved with an existing single-family dwelling consisting of approximately 1,700 square feet. According to the Real Property Data search contained in the file, the dwelling was built in 1929. Also according to the subdivision plat that was marked and accepted into evidence as Petitioner's Exhibit 3, 11 Homberg Avenue is known as Lot 93 in the "Henry Homberg's Subdivision," and was platted in 1914. The property owner, Mr. Smith, requests variance relief in order to legitimize existing conditions for the lot and his residence at 11 Homberg Avenue.

The property at proposed 13 Homberg Avenue (Case No. 2010-0271-A) is currently unimproved. Proffered testimony from Mr. Vettori revealed that this property is known as Lot 92 in the original subdivision plat as seen in Petitioner's Exhibit 3. However, this lot has never been established as separate from 11 Homberg Avenue. Interestingly, although laid out and platted, Lot 92 exists without a separate deed, address or tax number.² The property owner, Mr. Smith, and the contract purchaser, Mr. Stillerman, request variance relief to establish the property as a buildable lot.

² The subject properties have the same tax number -- 1511671200.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments received from the Office of Planning dated May 12, 2010 indicate that Petitioner owns sufficient adjoining land to conform to the minimum width and area requirements and therefore does not meet the standards stated in Section 304.1.C of the B.C.Z.R. However, there appears to be several existing undersized lots in the neighborhood. As such, the Planning Office does not oppose the Petitioner's request. If the variances are granted, the Planning Office suggests conditions, including submitting building elevations for review and approval prior to the issuance of any building permit, requiring that the dwelling shall be compatible with existing dwellings in the area, providing landscaping along the public road, and retaining a large mature evergreen Southern Magnolia tree. As to this last condition pertaining to the Magnolia tree, Petitioners acknowledged the natural aesthetics of the tree, but stated it would be extremely difficult to guarantee that it could be retained, given its location in the front yard of proposed 13 Homberg Avenue. The tree would likely make building a dwelling in line with the other dwellings on the street prohibitive, and might also pose problems tapping into underground water and sewer lines. As such, Petitioners requested that this request by the Planning Office not be included in the condition of the Order if the relief is granted.

Considering of all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. Without variance relief, Lot 93 would be in violation of the current regulations and Lot 92 could not be developed. Obviously, strict compliance with the Zoning Regulations would create a hardship and would result in a denial of a reasonable and sufficient use of the property. *See, Belvoir Farms v. North* 355 Md. 259 (1999). The evidence indicates that the subject properties were platted as separate lots of record since 1914. As is often the case with older

subdivisions, many of the lots in Henry Homberg's Subdivision are undersized and do not meet current width and setback requirements. 11 Homberg Avenue is representative of most of the lots in the subdivision, undersized and improved with a primary structure built over 90 years ago. On the other hand, proposed 13 Homberg Avenue, although unimproved, is almost identical in metes and bounds to other lots in the subdivision. Hence, in my view, the imposition of current zoning disproportionately impacts the subject lots as compared to other properties in the zoning district. Moreover, the irregular, jagged shape to the rear of the properties render the properties unique in my view. Further, the location of the properties in a "transition area" similarly adds to such uniqueness. Thus, I find these variance requests can be granted in strict harmony with the spirit and intent of Section 307 of the B.C.Z.R., as interpreted in *Cromwell v. Ward*, 102 Md.App. 691 (1995). The only deficiency in both of these instances is the lot width, which is five feet shy of the required 55 feet. As to the side yard setback variance, this is to legitimize an existing condition. It is also noteworthy that this type of proposed in-fill development is a preferred manner of development, since the newly proposed 13 Homberg Avenue, which has existed as a lot of record for almost 100 years, can utilize existing infrastructure and public services. Hence, the variance requests can be granted without any detriment to the public health, safety and general welfare of the surrounding locale.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence presented, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 28th day of June, 2010 by this Deputy Zoning Commissioner, that Petitioners' Variance relief requests for the properties set forth as follows:

Case No. 2010-0270-A: For the property located at 11 Homberg Avenue, the Variance requests as follows:

- From Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a minimum lot width of 50 feet in lieu of the minimum lot width required of 55 feet; and
- From Sections 232.2, 302.1, and 1B02.3.C.1 of the B.C.Z.R. to permit a minimum width of individual side yard of 8 feet in lieu of the minimum width of individual side yard of 10 feet; and

Case No. 2010-0271-A: For the property located at proposed 13 Homberg Avenue, the Variance request as follows:

- From Section 1B02.3.C.1 of the B.C.Z.R. to permit a minimum lot width of 50 feet in lieu of minimum lot width permitted of 55 feet,
be and are hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for their 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.
2. Petitioners shall submit building elevations to the Office of Planning for review and approval prior to the issuance of any building permit.
3. The proposed dwelling shall be compatible in size, exterior building materials, color and architectural details as that of the existing dwellings in the area.
4. Petitioner shall provide landscaping along the public road.

Advisory – though not required as a condition of this Order, if possible, the large mature evergreen Southern Magnolia situated on proposed 13 Homberg Avenue should be retained. The Office of Planning indicates in their ZAC comment that it is off to one side of the lot so that access to the lot is not blocked. They also state that the house can be set back from the street further than the neighboring houses and still meet the rear setbacks. This mature tree provides some additional privacy to any proposed new house, and in bloom the tree is the centerpiece of the neighborhood.

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