

<p>IN RE: PETITION FOR VARIANCE N side of New Section Road; 264 feet NW of the c/l of Seneca Road 15th Election District 6th Councilmanic District (3908 New Section Road)</p> <p>Joseph V. and Karen L. Maranto <i>Petitioners</i></p>	* BEFORE THE * DEPUTY ZONING * COMMISSIONER * FOR BALTIMORE COUNTY * CASE NO. 2010-0282-A
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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 owners of the subject property, Joseph V. and Karen L. Maranto. Petitioners are requesting Variance relief as follows:

- From Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow 10 foot side yard setbacks in lieu of the required 50 foot side yard setback in a R.C.5 Zone; and
- From Section 1A04.3.B.3 of the B.C.Z.R. to allow 18.89% building coverage in lieu of the required 15% building coverage in a R.C.5 Zone; and
- From Section 1A04.3.B.1.a of the B.C.Z.R. to allow an undersized lot of 0.240 acre in lieu of the required 1.5 acres of land in a R.C.5 Zone; and
- From Section 1A04.3.A of the B.C.Z.R to allow a building height of 38 feet in lieu of the required building height of 35 feet in a R.C.5 Zone.

The subject property and requested relief are more fully described on the revised site plan which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the variance requests was Petitioner Karen L. Maranto and William N. Bafitis with Bafitis & Associates, Inc., the professional

engineer who prepared the revised site plan. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is rectangular in shape, contains approximately 10,479 square feet or 0.240 acre, more or less, zoned R.C.5. The property is approximately 50 feet wide by 209 feet deep and is located on the north side of New Section Road, which extends east from Bowleys Quarters Road and has water frontage on Seneca Creek to the north, in the Bowleys Quarters area of Baltimore County. The property is presently improved with an existing one-story dwelling, as well as a one-story one car garage located on the street side of the property.

Petitioners acquired the property in 2006 and have resided there since that time. According to SDAT property tax records, the dwelling was built in 1936 and is known as Lot 305 as part of the "Second Addition to Plat No. 2 of Bowleys Quarters" that was recorded on June 6, 1931, as shown on the recorded plat that was marked and accepted into evidence as Petitioner's Exhibit 3. At this juncture, Petitioners desire to raze the existing home and replace it with a new dwelling. They also plan to remove the existing garage and an existing stone parking area located near the garage. In order to follow through with the improvements, Petitioners are in need of the instant zoning relief from the height, area, building coverage, and setback restrictions that exist in the R.C.5 Zone.

In support of the variance requests, Petitioners' engineer, Mr. Bafitis, submitted photographs of the property and the existing dwelling, as well as the surrounding properties on each side, which were marked and accepted into evidence as Petitioners' Exhibits 4A through 4P. The photographs are emblematic of the area -- there is a mix of older "shore shacks" (such as Petitioners') in various states of maintenance and repair, as well as newer, mostly larger and taller

homes that have been built more recently. Petitioners' home has been well cared for, but has reached its limitation as far as usable space and potential resale value down the road. Hence, Petitioners desire to raze the existing small, dated dwelling and construct a new home with today's materials and workmanship. Unfortunately for Petitioners, this endeavor also involves compliance with today's R.C.5 zoning requirements. In further support of the requested relief, Petitioners submitted letters of support from their adjacent neighbors, James S. Davison of 3906 New Section Road and Kenneth Watkins of 3910 New Section Road, which were marked and accepted into evidence as Petitioners' Exhibits 5A and 5B, respectively.

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 May 14, 2010 which indicates the Office does not oppose Petitioners' request, provided the construction complies with the current R.C.5 requirements. In order to make this determination, the Office of Planning will require the submission of additional information, which will be expounded on further in this Order. Comments were received from the Bureau of Development Plans Review dated April 29, 2010. The comments indicate that the first floor or basement must be at least one foot above the flood plain elevation in all construction, the building should be designed and adequately anchored to prevent flotation or collapse and constructed of materials resistant to flood damage. Flood-resistant construction should be in accordance with the Baltimore County Building Code which adopts the International Building Code. Comments were also received from the Department of Environmental Protection and Resource Management dated June 8, 2010 which indicates that development of the property must comply with the Chesapeake Bay Critical Area Regulations. This lot is within a Limited Development Area (LDA) and a Buffer Management Area (BMA) in the Chesapeake Bay Critical Area. The lot coverage limits for this lot are 25%; lot

coverage may go up to 31.25% with mitigation for the amount over 25%. The proposal shows lot coverage over the allowable amount. The 15% afforestation requirement will apply, which equates to 3 trees. For lot coverage and afforestation requirements, only the lot acreage above mean high water can be used. All BMA requirements must be met, including mitigation.

This case presents an increasingly common set of circumstances before this Commission; namely, waterfront properties in eastern Baltimore County that are zoned R.C.5, but were platted and recorded decades ago -- certainly prior to the adoption of Zoning Regulations in these areas -- and thus do not meet the current zoning requirements for setbacks, minimum area, and building coverage. In addition, because these areas are within the floodplain, the base flood and flood protection elevations also make it increasingly difficult for property owners to replace aged, often dilapidated original structures that were relatively small and intended as summer cottages with new homes of sufficient size that are often used as a primary residences, yet still not exceed the maximum allowable height of 35 feet.

Thus, the task for this Commission is to review the purpose of the R.C.5 Zone and interpret that in the context of these waterfront properties. Section 1A04.1.B states that the R.C.5 zoning classification is established in order to: (1) provide for rural-residential development in suitable areas in which basic services are not anticipated, (2) eliminate scattered and generally disorderly patterns of future rural-residential development, (3) assure that encroachments onto productive or critical natural resource areas will be minimized, and (4) provide a minimum lot size which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems.

Turning now to the instant matter, I am persuaded to grant the requested relief. Although the subject property does not meet the minimum lot area requirement of 1½ acres, nor the height and side yard setback limitations, in my view, this lot -- and others like it -- is clearly consistent

with the purpose of the R.C.5 zoning classification, and therefore meets the spirit and intent of the Zoning Regulations. As to the concern over the provision of basic services and adequate area for on-site sewer and water systems, in this case the property does have access to existing public water and sewer services. As to the issue of scattered and generally disorderly patterns of future rural-residential development, that is also not impacted here. This property is a lot of record and has been in existence for almost 80 years. As depicted in the record plat accepted into evidence as Petitioners' Exhibit 3, it was platted and recorded as part of a planned layout of waterfront properties on the Bowleys Quarters peninsula. Regarding the encroachments onto productive or critical natural resource areas, this property is situated in the Chesapeake Bay Critical Area and is subject to stringent regulations at the State and local level, including lot coverage requirements, afforestation, and mitigation in environmentally sensitive areas. DEPRM's careful watch over these issues will minimize the potential impact of this development in those areas. In addition, it is noteworthy that the existing home and improvements currently have a building coverage of 18.92%; however, with the proposed new dwelling and the removal of some existing improvements, lot coverage will actually be reduced slightly to 18.89%.

I also find the property unique in a zoning sense in that the setback and height constraints cause the subject property to be disproportionately impacted by the Zoning Regulations as compared with other surrounding properties, making it virtually impossible for Petitioner to have any dwelling erected on the property. The property is only 50 feet wide and the setback for each side is 50 feet. Moreover, the base flood and flood protection elevation requirements almost automatically dictate that a proposed dwelling will begin with a 10 or 11 foot height above ground level, leaving perhaps only 25 feet for the enclosed living areas of the dwelling height, including an adequate roof pitch.

Finally, I find that the variance requests 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.

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 granted.

THEREFORE, IT IS ORDERED this 10th day of June, 2010 by this Deputy Zoning Commissioner, that Petitioners' Variance requests as follows:

- From Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations ("B.C.Z.R.") to allow 10 foot side yard setbacks in lieu of the required 50 foot side yard setback in a R.C.5 Zone; and
- From Section 1A04.3.B.3 of the B.C.Z.R. to allow 18.89% building coverage in lieu of the required 15% building coverage in a R.C.5 Zone; and
- From Section 1A04.3.B.1.a of the B.C.Z.R. to allow an undersized lot of 0.240 acre in lieu of the required 1.5 acres of land in a R.C.5 Zone; and
- From Section 1A04.3.A of the B.C.Z.R to allow a building height of 38 feet in lieu of the required building height of 35 feet in a R.C.5 zone,

be and are hereby **GRANTED**, subject to the following:

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.

2. Prior to obtaining a building permit, Petitioners shall submit the following information to the Office of Planning for their determination that the proposed structure meets the RC 5 Performance Standards:
 - a. Submit photographs of existing adjacent dwellings to the Office of Planning.
 - b. Submit building elevations (all sides) of the proposed dwelling to the Office of Planning for review and approval. The proposed dwelling shall be compatible in size and architectural detail as that of the existing dwellings in the area. Ensure that the exterior of the proposed building(s) use the same finish materials and architectural details on the front, side and rear elevations. Use of quality material such as brick, stone or cedar is encouraged.
 - c. Design all decks, balconies, windows, dormers, chimneys and porches as a component of the building following dominant building lines. Decks shall be screened to minimize visibility from a public street.
 - d. Design all accessory structures at a scale appropriate to the dwelling and design garages with the same architectural theme as the principal building, on the site, providing consistency in materials, colors, roof pitch and style.
 - e. Provide landscaping along the public road, if it is consistent with the existing streetscape.
3. The base flood elevation for this site is 10.2 feet Baltimore County Datum. The flood protection elevation for this site is 11.2 feet. In conformance with Federal Flood Insurance Requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.
4. The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.
5. The building engineer shall require a permit for this project. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
6. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.
7. Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).

8. This lot is within a Limited Development Area (LDA) and a Buffer Management Area (BMA) in the Chesapeake Bay Critical Area. The lot coverage limits for this lot are 25%; lot coverage may go up to 31.25% with mitigation for the amount over 25%. The proposal shows lot coverage over the allowable amount. The 15% afforestation requirement will apply, which equates to 3 trees. For lot coverage and afforestation requirements, only the lot acreage above mean high water can be used. All BMA requirements must be met, including mitigation.

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