

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
E side of Jericho Road; 385 feet N of		
the c/l of Green House Lane	*	DEPUTY ZONING
11 th Election District		
3 rd Councilmanic District	*	COMMISSIONER
(12307 Jericho Road)		
	*	FOR BALTIMORE COUNTY
Lee E. Maglov and Alan B. Entwistle		
<i>Petitioners</i>	*	CASE NO. 2010-0285-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by the legal property owners, Lee E. Maglov and Alan B. Entwistle. Petitioners request Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) and pursuant to Sections 1A04.3.B.1.b(1) and 1A04.3.B.2.b of the B.C.Z.R. for an addition (garage) with a side yard setback of 26 feet and a front yard setback of 115 feet from the centerline of a collector road in lieu of the required 50 feet and 150 feet, respectively. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief was Lee Giroux, land use and zoning consultant and representative for Petitioners, who also prepared the site plan accepted as Petitioners’ Exhibit 1. Also appearing at the public hearing was Harry Williams of 12301 Jericho Road, who did not participate in the proceedings or express any opposition to the requested relief. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence presented revealed that the subject property is rectangular in shape consisting of approximately 0.94 acre, more or less, zoned R.C.5 and located in the

Kingsville area of Baltimore County, near the Harford County line, on the east side of Jericho Road with ingress/egress from Jericho Road, which is also designated as a collector road.¹ This designation affects the applicable setback requirements. The subject property is located between sections of Gunpowder Falls State Park to the north and south, with Little Gunpowder Falls running to the east. According to the Real Property Data Search contained in the file, the property is improved with a single-family dwelling built in 1954 consisting of 1,832 square feet. Photographs of the single-family dwelling were marked and accepted into evidence as Petitioner's Exhibits 3A through 3B. Petitioner Ms. Maglov is also an owner of the adjacent property to the north, 12311 Jericho Road.²

Petitioners propose to construct a 25 foot wide by 40 foot long garage addition to the existing single-family dwelling. Elevation drawings of the proposed addition were marked and accepted into evidence as Petitioner's Exhibit 4. Petitioner is requesting special hearing relief pursuant to Sections 1A04.3.B.1.b(1) and 1A04.3.B.2.b of the B.C.Z.R. because this proposed garage would create a side yard setback of 26 feet and a front yard setback of 115 feet from the centerline of a collector road in lieu of the required 50 feet and 150 feet, respectively. Ms. Giroux explained that relief in this instance is appropriate because the subject property is a single lot of record not within a subdivision, existing prior to September 2, 2003, that does not meet the minimum acreage requirement or setback requirements. Ms. Giroux submitted a Deed for the subject property dated May 6, 1953 that was marked and accepted into evidence as Petitioner's Exhibit 2 to evidence that the property was indeed a lot of record existing prior to September 2,

¹ Section 1A04.3.B.2.a of the B.C.Z.R. defines a "collector road" as a street or road that is intended for travel, including commuter travel, between residential neighborhoods, but not for travel within neighborhoods, and is not designated as a principal arterial.

² According to the Real Property Data Search for 12311 Jericho Road contained in the file, said property consists of 1.06 acres, more or less, and is improved with a primary structure built in 1957 with 1,666 square feet, jointly owned by Ronald J. Maglov and Lee E. Maglov.

2003. Furthermore, Ms. Giroux pointed out that the lot consists of only 0.944 acre, and therefore does not meet the minimum acreage requirements for the R.C.5 Zone, nor the setback requirements for the R.C.5 Zones.³

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated May 13, 2010, which indicate that they do not oppose the Petitioners' request. However, it should be observed that this portion of Jericho Road is scenic and therefore a row of vegetation shall be planted along the front of the property to provide mitigation for the impact to the scenic view. Additionally, fences and walls shall harmonize with the surroundings, indigenous species shall be used when landscaping, and complement existing vegetation with flowering or evergreen trees and shrubs. Building elevations shall be reviewed and approved prior to application of any building permit. Comments were similarly received from the Department of Environmental Protection and Resource Management (DEPRM) dated June 9, 2010, which indicate that the property must comply with the Forest Conservation Regulations. Further, the building permit for the proposed garage must be reviewed by the Groundwater Management Section.

After considering the testimony and evidence presented, I am persuaded to grant the special hearing relief. Section 1A04.3.B.1.b(1) of the B.C.Z.R. states that:

The owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003, but does not meet the minimum acreage requirement, or does not meet the setback requirement of Paragraph 2, may apply for a special hearing under Article 5 (500.7) to alter the minimum lot size requirement.

³ Section 1A04.3.B.1.a of the B.C.Z.R. states that "a lot having an area of less than 1 ½ acres may not be created in an R.C.5 Zone. The maximum gross residential density is 0.5 dwelling per acre." Therefore, 2 acres are necessary in order to have a "buildable" lot in compliance with this section. Setback requirements are established by Section 1A04.3.B.2.b.

As discussed above, I find that Petitioners have met all the requirements of this Section in order to receive special hearing relief, thereby allowing non-compliance with the setback requirements for the R.C.5 Zone.⁴

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioners' request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 23rd day of June, 2010, that Petitioners' request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") for an addition (garage) with a side yard setback of 26 feet and a front yard setback of 115 feet from the centerline of a collector road in lieu of the required 50 feet and 150 feet, respectively, be and is hereby **GRANTED** subject to the following conditions:

1. Petitioners may apply for 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. A row of vegetation shall be planted along the front of the property to provide mitigation for the impact to the scenic view.

⁴ Although the Special Hearing relief is granted, it is the opinion of this Deputy Zoning Commissioner that the proposed garage and subsequent infringement upon setback requirements necessitates Variance relief pursuant to 307.1 of the B.C.Z.R. Under that Section, the Zoning Commissioner has the power to grant variances from height and area regulations provided certain requirements are met. Section 1A04.3.B.1.b(1), as this Deputy Zoning Commissioner interprets that section, permits Special Hearing *only* to alter the minimum lot size requirement, *not* the setback requirements. This case does not involve altering the minimum lot size requirement. Rather, it involves altering the required 50-foot side yard setback and 150-foot front yard setback from the centerline of a collector road for a proposed garage to be added to the existing principal building. Hence, in my view, the appropriate review for this case is under the Variance standard.

3. The Petitioners shall design and locate fences and walls to harmonize with the surroundings and to create the least visual impact and that vegetation is used to buffer them as well.
4. Petitioners shall use indigenous species or ones commonly found in the area when landscaping. Planting design shall reinforce the character of the site.
5. Petitioners shall complement existing vegetation with flower or evergreen trees and shrubs, wildflowers, etc., for seasonal interest.
6. Petitioners shall submit building elevations to the Office of Planning for review and approval prior to the application for a building permit.
7. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

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