

IN RE: PETITION FOR VARIANCE
S side of Poplar Road; 20 feet W of
the c/l of Cedar Creek Road
15th Election District
6th Councilmanic District
(1907 Poplar Road)

**William Besnoska, Regina Besnoska,
and Jeremy Besnoska**
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **CASE NO. 2010-0317-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 owners of the subject property, William Besnoska, Regina Besnoska, and Jeremy Besnoska. 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 permit a proposed single-family dwelling with a front yard setback of 29 feet from the centerline of a road, a side yard setback of 70 feet from the centerline of a road, and a rear yard setback of 6 feet in lieu of the required 75 feet, 75 feet, and 50 feet, respectively; and
- From Section 304 of the B.C.Z.R. to approve the subject property as an undersized lot.

The subject property and requested relief are more fully described on the 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 were Petitioners William and Regina Besnoska, and their son, Jeremy Besnoska. There were no Protestants or other interested persons in attendance at the hearing, although several letters in opposition to the requested relief were received and will expounded on further in this Order.

Testimony and evidence offered revealed that the subject property is rectangular shaped and consists of approximately 7,248 square feet or 0.166 acre, more or less, zoned R.C.5. The property is located at the southwest corner of Poplar Road and Cedar Creek Road, north of Holly Neck Road and east of Back River Neck Road near the terminus of Cedar Creek to the north and east, in the Essex/Middle River area of Baltimore County.¹ The property is currently unimproved, though as shown on the record plat that was marked and accepted into evidence as Petitioners' Exhibit 4, it is part of the original "Cedar Beach · Section One" subdivision, which was recorded in 1925. The subject property is depicted as Lots 220 and 221 -- each 25 feet wide for a total of 50 feet wide and an average depth of 151.5 feet. As is often the case with older subdivisions, the plat was prepared and recorded prior to the adoption of any Zoning Regulations in Baltimore County. Thus, the parcel is insufficiently sized and does not meet today's zoning requirements, hence the request for variance relief.

Petitioners William and Regina Besnoska indicated they purchased the property in late December 2009. They also related that they live 1912 Poplar Avenue, on the north side of the road across the street from the subject property, and have resided there almost 30 years. Their property fronts Cedar Creek. The main reason they purchased the subject property is so their son, Petitioner Jeremy Besnoska, could build a home on the lot and live close by. They explained that there are some health issues as they advance in age and it would be beneficial if Jeremy could live fairly close to them in order to provide some assistance. When the subject property became available, it became a natural fit for their family.

In support of the requested relief, Petitioners submitted photographs of the property that were marked and accepted into evidence as Petitioners' Exhibits 5A through 5D. Petitioners'

¹ Heading east, Cedar Creek leads into the larger Sue Creek, which in turn leads into Middle River and eventually the Chesapeake Bay.

Exhibits 5A and 5B depict the property soon after it was purchased and shows it basically as a debris field and dumping ground for others. There is also an abundance of years and years of fallen leaves strewn about the property, where it seems no upkeep or maintenance at all has occurred. On the other hand, Petitioners' Exhibits 5C and 5D show that the property has been dramatically cleaned up with some vegetation cleared and grass planted. Although some trees have been removed, a number of mature trees remain. Petitioners indicated they hope to keep as many existing trees as possible, while still being able to build on the property. In further support of the relief, Petitioners submitted a written petition signed by 11 nearby neighbors in the Poplar Road – Cedar Creek area, expressing their support for Petitioners' plans. This petition was marked and accepted into evidence as Petitioners' Exhibit 6. Finally, Petitioners submitted architectural drawings and elevations for the proposed home to be built on the property, which was marked and accepted into evidence as Petitioners' Exhibit 7. These drawings depict a relatively modest, three bedroom cape cod style home that would be approximately 28 feet wide by 46 feet deep.

In anticipation of the hearing, the undersigned received letters of opposition from two individuals. The first was from Kim Burton of 1952 Sue Creek Drive dated July 15, 2010, which was marked and accepted into evidence as Protestant's Exhibit 1. Ms. Burton's property is located north of the subject site, above Cedar Creek, in the Sue Creek Landing subdivision. She does not believe zoning relief should be granted because Petitioners should have been aware of the R.C.5 zoning of the property that was introduced in 1975 -- and the significant setback requirements -- well before they purchased. There are also several mature trees that contribute to the rural characteristic of the neighborhood and are helpful to the environment. In sum, Ms. Burton believes a home on this property would result in overdevelopment and have a negative

impact on the neighborhood. She also does not believe the property meets the variance standard due to its rectangular shape. In addition, a second letter was sent by Christa Adle Hammer of 1024 Cedar Creek Road dated July 16, 2010, which was marked and accepted into evidence as Protestant's Exhibit 2. Ms. Hammer's property is several blocks south of the subject property in the Cedar Creek subdivision. Her letter is almost identical to Ms. Burton's letter and expresses the same sentiments as Ms. Burton.

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 June 11, 2010 do 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 Department of Environmental Protection and Resource Management dated July 8, 2010 which indicates that development of the property must comply with the Chesapeake Bay Critical Area Regulations. The subject property is located within a Limited Development Area (LDA) of the Chesapeake Bay Critical Area. The LDA regulations impose lot coverage limits of 25% for a property this size (7,248 square feet). In addition, the LDA regulations require afforestation for 15% tree coverage. If the construction of the proposed dwelling will necessitate removal of the existing trees, then the planting of two native, deciduous trees, 4 to 5 feet in height, will be required.

This case, as with other properties in the area that are zoned R.C.5, presents an increasingly common set of circumstances before this Commission; namely, properties on or near the waterfront 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 and minimum lot size.

Thus, the task for this Commission is to review the purpose of the R.C.5 Zone and interpret the Regulations in the context of these 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 front, side, and rear 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 85 years. As depicted in the record plat accepted into evidence as Petitioners' Exhibit 4, it was platted and recorded as part of a planned layout of properties on or near the waterfront at Cedar Creek and Sue Creek. This is the type of orderly, in-fill development utilizing existing services and infrastructure that is a desired and preferred method of development. 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 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. I also find the property to be unique in a zoning sense in that the setback constraints cause the subject property to be disproportionately impacted by the Zoning Regulations as compared with other surrounding properties, making it virtually impossible for Petitioners to have any dwelling erected on the property. The property is only 50 feet wide and the setback for each side to a property line is 50 feet and for the front is 75 feet, approximately half the depth of the property. As to the undersized lot variance, I am persuaded to grant this relief as well. Based on the evidence presented, the property meets the requirements of Section 304.1 of the B.C.Z.R. for approval as an undersized lot

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 22nd day of July, 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 permit a proposed single-family dwelling with a front yard setback of 29 feet from the centerline of a road, a side yard setback of 70 feet from the centerline of a road, a rear

- From Section 304 of the B.C.Z.R. to approve the subject property as an undersized lot,

be and are hereby **GRANTED**, subject to the following which are conditions precedent to the granting of the relief:

1. Petitioners may apply for their building permit 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. 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).
3. The subject property is located within a Limited Development Area (LDA) of the Chesapeake Bay Critical Area. The LDA regulations impose lot coverage limits of 25% for a property this size (7,248 square feet). In addition, the LDA regulations require afforestation for 15% tree coverage. If the construction of the proposed dwelling will necessitate removal of the existing trees, then the planting of two native, deciduous trees, 4 to 5 feet in height, will be required.
4. 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.

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