

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
E Corner of 5 th Street and		
Hinton Avenue	*	ZONING COMMISSIONER
(2809 5th Street)		
	*	OF
15 th Election District		
7 th Council District	*	BALTIMORE COUNTY
Gloria J. & John C. Holthaus, et al	*	Case No. 2010-0341-A
Petitioners		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Gloria J. Holthaus, and her husband, John C. Holthaus.¹ As originally filed, the Petitioners requested variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling on a lot 50 feet wide in lieu of the required 55 feet and a side street setback of 10 feet in lieu of the required 25 feet.² The subject property and requested relief are more particularly shown on the revised site plan submitted which was accepted into evidence and marked as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the request were Thomas A. Lentz, one of the partial owners, and his nephew, Russell Marsh, a civil engineer who is assisting the Petitioners. There were no Protestants or other interested persons present.

Testimony and evidence offered disclosed that the subject property, known as 2809 5th

¹ In 1954 the property was improved with two (2) homes and purchased for summer vacation use by inter-family members; namely, Milton Lentz, Katherine Lentz, Joseph Barry, Nola Barry, Joseph Lipinski, Martha Lipinski, Bernard Grabowski, Irene Grabowski, Albert Lentz, Clara Lentz, Henry Lipinski, and Agnes Lipinski. Over the decades, many family members have departed this world and the property has been devised and transferred to children, their nieces and nephews. See deed history – Petitioners’ Exhibit 3.

² The site plan was revised at the onset of the hearing in response to a Zoning Advisory Committee (ZAC) comment received from the Bureau of Development Plans Review. This new site plan reflects a side street setback of 11 feet from the property line so that the new footing will not encroach on the existing County drainage and utility easement.

Street, consists of two (2) adjacent parcels known as Lots 67 and 68 of Swan Point (Baltimore County Plat Book No. WPC7-Folio 162 and 163) each 50' wide x 150' deep, consisting in area(s) of 7,500 square feet, zoned D.R.5.5 and located within the Chesapeake Bay Critical Area (CBCA) in the Millers Island area of Baltimore County. The owners seek the necessary zoning approval to construct a new dwelling on Lot 67 in accordance with Petitioners' Exhibit 1 that will be compatible in both size and architectural detail with those other homes existing in the area. Lot 68 is an interior lot and improved with a modest one-story single-family home built in 1929 and containing 1,456 square feet. As stated, the subject of the variance before me is Lot 67, a water-oriented corner lot defined in Section 101 of the B.C.Z.R. as: "A lot abutting on and at the intersection of two or more streets". The property located at the corner of Hinton Avenue and 5th Street, south of the Back River, was at one time improved with a dwelling, as shown on the Plat of Swan Point, which was marked and accepted into evidence as Petitioners' Exhibit 2. That plan shows a dwelling located centrally on the lot and facing Hinton Avenue. Both of the shore homes (Lots 67 and 68) were used by the multi-family owners on the weekends and for vacationing. Mr. Lentz described that every summer starting in the early 1950's each family would pick a name from a hat in order to determine their turn to use the property. However, the summer home on Lot 67 was virtually destroyed many years ago by hurricane and storm damage and has been razed and never rebuilt. The Lipinski and Lentz families obtained a permit to replace a damaged shed on the lot with a new accessory structure approximately 18' x 23' in size. At this juncture, Petitioners' propose to raze this shed and erect in its place a two-story dwelling approximately 29' wide x 50' deep that will front on 5th Street.

As outlined above, Petitioners need variance relief because although the property meets minimum area requirements, it does not meet the 55-foot minimum width requirement. In

addition, in order to erect a 29-foot wide dwelling, Petitioners are in need of a variance for a side street setback of 11 feet in lieu of the required 25 feet. Mr. Lentz indicated that the property is a unique parcel in that it is a corner lot and is constrained by the fact that the side yard facing Hinton Avenue must nevertheless conform to the front yard setback requirement. He indicated that Hinton Avenue is more akin to an alley or access road than a true street. The right-of-way is only 15 feet wide and the road itself is only about 12 to 13 feet wide, and mainly gives access to homes along the Back River.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments received from the Office of Planning, dated June 21, 2010, indicate that while the Petitioners own sufficient adjoining land to conform to the minimum width and area requirements . . . there appears to be several existing undersized lots in the neighborhood and that the Office does not oppose Petitioners' request. The comment further indicates that building elevations shall be submitted for review and approval prior to issuance of any building permit; the proposed dwelling shall be compatible in size, building materials, color and architectural detail as that of the existing dwellings in the area. Comments received from the Department of Environmental Protection and Resource Management (DEPRM), dated June 28, 2010, indicates that development of the property must comply with Chesapeake Bay Critical Area (CBCA) regulations. Additional comments indicate that a maximum of 25% of the site may be covered by impervious surfaces; however, the allotted 1,875 square feet may be exceeded by 500 square feet of impervious with offsetting mitigation. Also, 15% tree cover must be provided during the permit evaluation process.

Section 307 of the B.C.Z.R. contains the standards for the grant of variance relief. This section has been interpreted by the appellate courts of this State, most notably in *Cromwell v.*

Ward, 102 Md. App. 691 (1995). The fact that these lots were laid out prior to the adoption of the first set of zoning regulations (1945) is a significant factor. More significantly, the configuration of the overall tract (neighborhood) is quite unique. As noted in prior opinions (See by way of example: Case Nos. 94-153-A, 03-096-A, 06-037-A, 06-297-A, 06-327-SPH, 08-055-A, 08-059-A, 08-200-A and 2010-0079-SPHA), this area of Swan Point community has not been developed like other areas. See, Swan Point development Plat and aerial photograph marked as Petitioners' Exhibit 4 depicting the theme of development and zoning history.

Second, *Cromwell* requires a finding of practical difficulty. The D.R.5.5 zoning regulations permit, by right, the development of the subject property with a single-family dwelling. These regulations impose a number of requirements for the construction of a home. In this case, nearly all of those requirements are met. The strict compliance of the zoning regulations would result in practical difficulty or unreasonable hardship in this case. In short, strict compliance would prevent Petitioners from erecting a replacement dwelling that is compatible with others in the neighborhood and would essentially render an otherwise desirable property useless and unbuildable. Finally, these variances can be granted in strict harmony with the spirit and intent of the regulations, and in such a manner as grant relief without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property and public hearing on the Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 29th day of July 2009 that the Petition for Variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling on a lot 50 feet wide in lieu of the required 55 feet and a side street setback of 11 feet (north side) in lieu of the requested

25 feet, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following conditions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at her own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) Compliance with the Zoning Advisory Committee (ZAC) comment submitted by the Department of Environmental Protection and Resource Management (DEPRM) relative to the Chesapeake Bay Critical Area regulations and all other appropriate environmental, floodplain and B.O.C.A regulations relative to the protection of water quality, streams, wetlands and floodplains. A copy of this comment, dated June 28, 2010, is attached hereto and are made a part hereof.
- 3) Prior to the issuance of any building permits, the Petitioners shall submit building elevation drawings to the Office of Planning for review and approval prior. The proposed dwelling shall be constructed substantially in accordance with the elevation drawings approved by the Office of Planning. Moreover, landscaping shall be provided along Hinton Avenue, if consistent with the existing streetscape.
- 4) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

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

WJW:dlw

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County