

IN RE: PETITIONS FOR VARIANCE	*	BEFORE THE
S/S Poplar Avenue, 125' E & 175' E of		
Woodside Avenue	*	ZONING COMMISSIONER
(4421 and 4419 Poplar Avenue)		
13 th Election District	*	OF
1 st Council District		
	*	BALTIMORE COUNTY
Roy C. Vest, Jr., et ux		
<i>Legal Owners</i>	*	
Homes of Woodside, LLC	*	Case Nos. 2010-0352-A &
<i>Contract Purchaser - (4419 Poplar)</i>		2010-0353-A
	*	
Petitioners		
	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Variance filed by the owners of the subject properties, Roy C. Vest, Jr. and his wife, Diane E. Vest, and the contract purchaser of 4419 Poplar Avenue, Homes of Woodside, LLC, by and through its managing member, Kyle O’Haro. Since the two (2) properties known as 4421 Poplar Avenue and 4419 Poplar Avenue are both currently owned by Roy and Diane Vest and are located adjacent to one another, the two (2) cases were heard contemporaneously. In Case No. 2010-0352-A (4419 Poplar Avenue), Petitioners request variance relief from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a minimum lot width of 50 feet in lieu of the required 55 feet for a proposed single-family dwelling. In Case No. 2010-0353-A (4421 Poplar Avenue), also a 50-foot wide lot, the Vests’ request variance relief from Section 1B02.3.C.1 to permit a side yard setback (east) of six feet, seven inches for an existing addition in lieu of the required ten feet. The subject properties and requested relief are more

particularly described on the site plan submitted in each case, which were accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requests on behalf of the legal owners were Diane Vest and Kyle O'Haro, the contract purchaser doing business as Woodside Homes, LLC. Also appearing in support of the requested relief were the realtors for the Vests, Barbara Cavender, of Community Real Estate Team, and Bobbie Ann Foster, of Long & Foster, the buyer's agent. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject properties, 4419 and 4421 Poplar Avenue are also known as Lots 101 and 100 of the Halethorpe subdivision and located adjacent to one another, on the south side of Poplar Avenue near Woodside Avenue in Halethorpe. Both lots are rectangular in shape consisting of lot widths of 50 feet and lengths of 125 feet and zoned D.R5.5. 4419 Poplar Avenue (Lot 101) is currently vacant and has never been improved. 4421 Poplar Avenue (Lot 100) is improved with a two-story single-family dwelling consisting of 1,968 square feet that was constructed in 1925. Both lots contain a property area of 6,250 square feet or 0.14 acre, more or less. The subdivision of Halethorpe is an older subdivision that was platted and recorded in the Land Records in Plat Book 1, Folio 66, prior to the first set of zoning regulations in Baltimore County. As is often the case with older subdivisions, many of the lots are undersized and do not meet current area and width requirements.

Petitioners desire to complete the sale of the 4419 Poplar Avenue property; however, in order to consummate the sale, variance relief is necessary in order to acknowledge that Lot 101 is a buildable lot and to allow its development with a single-family dwelling. Relief is requested to approve lot widths of 50 feet and to approve the property as an undersized lot (width at

building line less than that required by the area regulations) to permit the proposed development. Secondly, legal owners, Roy and Diane Vest, request variance relief for their family residence at 4421 Poplar Avenue in order to legitimize the existing conditions that when built did not meet the current setback requirements of the Zoning Regulations.

In support of the requested relief, Mrs. Vest testified that her father originally purchased the subject properties, along with several other lots nearby, in the late 1960's. Mrs. Vest stated that the properties never were joined in a single lot, or used accessory to one another but remained separate lots of record. Mrs. Vest explained that she came into ownership of 4421 Poplar Avenue in 1977, but it was not until 2006, that she purchased the unimproved lot at 4419 Poplar Avenue from her parent's estate. Both properties are lots of record and have their own tax identification numbers. 4421 Poplar Avenue (Lot 100) is identified as tax account number 1313007361, whereas 4419 Poplar Avenue (Lot 101) is identified as tax account number 13133007360. Mr. O'Haro noted that development of the vacant lot would meet all zoning setback requirements and would match the pattern of development in the subdivision allowing infill development of undersized lots. Photographs of houses in the neighborhood were marked and accepted as Petitioners' Exhibit 2.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments received from the Office of Planning on July 12, 2010 indicate no opposition to Petitioners' request for relief. Further, these comments request that if approval is granted, certain conditions be attached, specifically: building elevations shall be submitted to the Office of Planning for review and approval prior to the issuance of any building permit to ensure that the proposed dwelling at 4419 Poplar Avenue is compatible in size, exterior building materials, color and architectural detail as that of the existing dwelling in the area; that

photographs of adjacent and nearby dwellings be submitted to the Office of Planning for evaluation of compatibility for the proposed structure; and that landscaping be provided along Poplar Avenue, if applicable. No other adverse comments or suggestions were received from the pertinent Baltimore County agencies.

In regard to the requested relief, there is no physical evidence that the subject properties were used or consolidated with any other lot to invoke the doctrine of merger as described in *Friends of the Ridge v. Baltimore Gas & Electric Company*, 352 Md. 645 (1999) and *Remes v. Montgomery County*, 387 Md. 52 (2005). Moreover, the uncontradicted evidence clearly establishes that there has never been a desire to combine or merge the parcels, Lot 100 with Lot 101. The separate tax account numbers supports this conclusion, as does the testimony of Mrs. Vest, whose family has historical knowledge of the subject properties. Testimony offered in support of the requests was that without variance relief, Lot 101 could not be developed. Obviously, strict compliance with the regulations would create a hardship as the zoning regulations result in a denial of a reasonable and sufficient use of the property. *See Belvoir Farms v. North*, 355 Md. 259 (1999). Moreover, based on the testimony and evidence presented, the Petitioners are entitled to the variances as they have met the requirements of Sections 304 and 307.1 of the B.C.Z.R. *See Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43 (2007); *see also Cromwell v. Ward*, 102 Md. App. 691 (1995). It is of note that infill development is a preferred method of land development which thereby renders the currently vacant and unimproved Lot 101 ripe for construction. Moreover, it is apparent that development of 4419 Poplar Avenue is consistent with the pattern of development for other houses in the community. The only deficiency for this lot is the lot width, which is 5 feet shy of the required 55 feet. Additionally, other than the minimal side yard setback relief (evidently caused by

simply enclosing an existing porch), 4421 Poplar Avenue meets all front and rear setback requirements and legitimizing existing conditions is appropriate. Thus, in my view, the relief requested will not result in any detriment to the health, safety and general welfare of the surrounding locale and, therefore, would meet the spirit and intent of Section 307 for relief to be granted.

Pursuant to the advertisement, posting of the properties and public hearing on these Petitions 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 26th day of August 2010, that the Petitions for Variance filed in Case No. 2010-0352-A (Lot 101 aka 4419 Poplar Avenue), seeking relief from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed buildable lot with a width of 50 feet in lieu of the required 55 feet, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance filed in Case No. 2010-0353-A (Lot 100 aka 4421 Poplar Avenue), seeking relief from Section 1B02.3.C.1 of the B.C.Z.R. to permit a side yard setback (east side) of 6 feet, 7 inches for an existing addition (enclosed porch) in lieu of the required 10 feet, in accordance with Petitioners' Exhibit 1, be and are hereby GRANTED subject to the following conditions:

1. The Petitioners may apply for its building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at its own risk until the thirty (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. Petitioner/Contract Purchaser, Homes of Woodside, LLC, must submit building elevations to the Office of Planning for review prior to the issuance of any building permit. Photographs of adjacent and nearby dwellings (*See Exhibit 2*) shall likewise be submitted to the Office of Planning for evaluation to ensure that the proposed dwelling at 4419 Poplar Avenue is compatible with the surrounding area in terms of size, exterior building materials, color and architectural details.

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

WJW:esl

_____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
of Baltimore County