

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
N side of Oakleigh Beach Road; 83 feet		
E of the c/l of Meadow Avenue	*	DEPUTY ZONING
15 <sup>th</sup> Election District		
7 <sup>th</sup> Councilmanic District	*	COMMISSIONER
(804 Oakleigh Beach Road)		
	*	FOR BALTIMORE COUNTY
<b>Walter and Jamie Nicholson</b>		
<i>Petitioners</i>	*	<b>CASE NO. 2011-0068-A</b>

\* \* \* \* \*

**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, Walter and Jamie Nicholson. Petitioners are requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a front setback of 12 feet in lieu of the required 25 feet and a rear setback of 10 feet in lieu of the required 30 feet for a new dwelling with a deck. 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 variance request were Petitioners Walter and Jamie Nicholson. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is rectangular shaped and consists of approximately 7,947.5 square feet zoned D.R.5.5. The property is located on the north side of Oakleigh Beach Road, just east of Meadow Avenue and north of Wise Avenue, in the Dundalk area of Baltimore County. The property is part of the Oakleigh Beach subdivision that is situated north of the Sparrows Point Country Club with water frontage on Schoolhouse Cove leading into Bear Creek. The property is currently unimproved but according to Petitioners, was at one time improved with a summer “shore shack” that was torn down many years ago.

Petitioners purchased the property three years ago and at this point wish to erect a prefabricated modular home on the site. As shown on the site plan, the new dwelling would be 28 feet deep and 48 feet wide. Because of the configuration of the home, Petitioners desire to place it on the property so that the front and rear of the home face what is the side yard for most of the other properties in the area. As such, the front of the home would face toward the west and the side yards would face the road and the water, respectively.

Photographs of the property were marked and accepted into evidence as Petitioner's Exhibits 4A through 4O. As shown in the photographs, there are two large pine trees on the road side and several other mature trees in the interior of the property. The photographs, as well as the topographical map that was marked and accepted into evidence as Petitioners' Exhibit 3, depict a noticeable slope on the property from west to east. In support of the request to place the proposed home in a sideways configuration and, thus, the requested variance relief, Petitioners submitted additional photographs that were marked and accepted into evidence as Petitioners' Exhibits 5A through 5H. Petitioners explained that these photographs show a number of other homes in the neighborhood that have a presentation where the front of the home faces what is traditionally the side yard of the property. These include the homes at 705, 709, 715, and 918 Oakleigh Beach Road. In further support of the variance request, elevation drawings were submitted and marked and accepted into evidence as Petitioners' Exhibit 6. These elevations depict the modular Cape Cod-style home that Petitioners purchased and plan to move to the site in four sections. In addition, photographs of the actual home were marked and accepted into evidence as Petitioners' Exhibits 7A and 7B, and a plan for the two story deck to be attached to the water side of the home was marked and accepted into evidence as Petitioners' Exhibit 8.

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 October 6, 2010

which indicates that the variance to lot width is consistent and compatible with the community. The Petitioners indicated that they have purchased a modular home that is too wide to fit on the lot in the normal fashion so to make the structure fit they must turn it sideways so that the front door faces the side of the lot. Moreover, Petitioners have agreed to modify the side of the home that faces the road to give it the appearance of being a front façade including large windows, trim and landscaping. The aforementioned recommendation is conditioned on the fact that revised elevations be submitted to the Planning Office for review and approval. Elevations should include the changes and modifications described above. Provided this is met the Office of Planning does not oppose the Petitioners' request. Comments were received from the Department of Environmental Protection and Resource Management dated September 15, 2010 which indicates that development of the property must comply with the Chesapeake Bay Critical Area Regulations. The property is located in a Limited Development Area (LDA) and a Buffer Management Area (BMA) of the Chesapeake Bay Critical Area. Lot coverage is limited to 25% (1,987 square feet) and may be increased by 500 square feet (to 2,487 square feet) if mitigation is provided. In addition, the 15% afforestation requirement must be met; this equates to 2 trees. All other LDA and BMA regulations will apply to development on this property. Comments were received from the Bureau of Development Plans Review dated August 26, 2010 which indicates 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.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. I find special circumstances or conditions exist that are peculiar to the land or

structure which is the subject of the variance request. The property has certain topographical constraints that make it difficult to place a home in the traditional front to back arrangement. I also find that practical difficulty and undue hardship would befall Petitioners if the requested variance relief were not granted. Finally, I also find this variance request can be granted in strict harmony with the spirit and intent of the Zoning Regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare. As shown in photographs, there are a number of existing homes on Oakleigh Beach Road where the front of the home faces the side yard. Petitioners have purchased a modular home that will be similarly situated and will fit in well with the character and aesthetics of the community.

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 28<sup>th</sup> day of October, 2010 by this Deputy Zoning Commissioner that Petitioners' Variance request from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a front setback of 12 feet in lieu of the required 25 feet and a rear setback of 10 feet in lieu of the required 30 feet for a new dwelling with a deck, be is hereby **GRANTED**, subject to the following:

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. Revised elevation drawings shall be submitted to the Planning Office for review and approval prior to the issuance of any building permit. The side of the home that faces Oakleigh Beach Road shall be modified to give it a more inviting appearance, including placing a first floor window, trim and landscaping. Due to the constraints of the interior layout of the property (i.e. – first floor master bedroom with walk-in closet and bathroom

3. The base flood elevation for this site is 9.4 feet Baltimore County Datum. The flood protection elevation for this site is 10.4 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. The property is located in a Limited Development Area (LDA) and a Buffer Management Area (BMA) of the Chesapeake Bay Critical Area. Lot coverage is limited to 25% (1,987 square feet) and may be increased by 500 square feet (to 2,487 square feet) if mitigation is provided. In addition, the 15% afforestation requirement must be met; this equates to 2 trees. All other LDA and BMA regulations will apply to development on this property.

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