

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
SE side of Todd Avenue; 550 feet SW		
of the c/l of Bayside Avenue	*	DEPUTY ZONING
15 th Election District		
7 th Councilmanic District	*	COMMISSIONER
(9321 Todd Avenue)		
	*	FOR BALTIMORE COUNTY
Thomas J. and Teresa D. Giblin		
<i>Legal Owner</i>	*	
Charles S. Wolinski		
<i>Contract Purchaser</i>	*	CASE NO. 2011-0071-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, Thomas J. and Teresa D. Giblin, and the contract purchaser, Charles S. Wolinski. Petitioner is requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed single-family dwelling to be built on a lot with a width of 50 feet in lieu of the required 55 feet. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request were the property owner, Teresa D. Giblin, and the contract purchaser, Petitioner Charles S. Wolinski. 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 6,000 square feet or 0.14 acre, more or less, zoned DR 5.5. The property is located on the southeast side of Todd Avenue, west of North Point Road and Fort Howard Park, in the Fort Howard area of southeastern Baltimore County. The subject property, known as Lots 13 and 14 in the original record plat marked and accepted into evidence as Petitioner’s Exhibit 2, is 50

feet wide and 120 feet deep, much like most of the other lots in the North Point Terrace subdivision. It is currently unimproved with a mowed and manicured lawn as depicted in the photographs of the property marked and accepted into evidence as Petitioner's Exhibits 4A through 4F. Mrs. Giblin testified that she and her husband have owned the adjacent property to the south that consists of Lots 9 through 12 since 1986, and is improved with their single-family dwelling and pool. They purchased the subject property approximately six years ago. At that time, the property was improved with a small "shore shack" that was in a dilapidated condition. They had the structure removed and have since kept the property vacant as a separate parcel; Ms. Giblin also remarked that she continues to pay a separate water bill for the subject property for its connection to public water and sewer service.

At this juncture, Petitioner Mr. Wolinski desires to purchase the property and construct a two-story home. In order to do so, Petitioner requests variance relief due to the subject property having a lot width of 50 feet which is 5 feet less than the required 55 foot lot width for the D.R.5.5 Zone pursuant to Section 1B02.3.C.1 of the B.C.Z.R. Put simply, the current lot width renders the lot unfit for development absent variance relief. Petitioner testified in support of the relief and indicated that a majority of the lots in the North Point Terrace subdivision are only 25 feet wide and are clearly intended to be buildable, as shown on the record plat that was marked and accepted into evidence as Petitioner's Exhibit 2. The subdivision was recorded on May 14, 1918, well prior to the adoption of the current zoning regulations which now require a lot width of 55 feet, thus in a sense rendering the subject property nonconforming. Petitioner's building of a single-family residence would be in-fill development as most of the subdivision has already been improved, save for a few other unimproved lots. In-fill development is a preferred manner of development

due to the fact that water, sewer and other necessary utilities are already accounted for and thus impacts the land and the surrounding neighborhood minimally.

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 September 14, 2010 which indicates that Mr. and Mrs. Giblin own sufficient adjoining land to conform to the minimum width and area requirements and therefore the property does not meet the standards stated in Section 304.1.C of the B.C.Z.R. However, there appear to be several existing undersized lots in the neighborhood. As such, the Planning Office does not oppose the request. If the request is granted, certain conditions shall apply to the proposed dwelling. These conditions include: submit building elevations for review and approval prior to the issuance of any building permit; proposed dwelling shall be compatible in size, exterior materials, color and architectural detail as that of the existing dwellings in the area; provide and landscaping along the public road if applicable. 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) of the Chesapeake Bay Critical Area. Lot coverage is limited to 25% (1,500 square feet) and may be increased by 500 square feet (to 2,000 square feet) with mitigation. In addition, the 15% afforestation requirement must be met; this equates to 2 trees. All other LDA regulations will apply to development on this property.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested 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 is certainly unique given the age of the record plat that dates back to 1918 and the fact that the majority of the lots in

the North Point Terrace Subdivision were platted to a width of 25 feet and have been developed with widths of 50 feet.

I also find that practical difficulty and undue hardship would befall Petitioner if the requested variance relief were not granted. No matter what improvement would be planned, there is no possible way for Petitioner to comply with the 55 foot minimum lot width required in the D.R.5.5 Zone. Denying the variance request would also inhibit beneficial uses of the property that are otherwise permitted by the Regulations for Petitioner or any other prospective purchaser of the subject property.

I further find that the variance 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. Although the letter of Section 304.1 of the B.C.Z.R. cannot be met in this instance due to the fact that Mr. and Mrs. Giblin own sufficient adjoining land, in my view, the spirit of that Regulation is achieved as to Petitioner because the two lots that make up the subject property were duly recorded in a validly approved subdivision prior to March 30, 1955, and all other requirements of the height, area, and setback regulations are complied with. It is also noteworthy that the Giblin's purchased the subject property separately, many years after they acquired the adjacent property, and have held the ownership of the subject property independent and apart from the property in which they reside.

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 Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED this 18th day of October, 2010 by this Deputy Zoning Commissioner that Petitioner's Variance request from Section 1B02.3.C.1 of the Baltimore

County Zoning Regulations (“B.C.Z.R.”) to permit a proposed single-family dwelling to be built on a lot with a width of 50 feet in lieu of the required 55 feet be is hereby **GRANTED**, subject to the following:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Building elevations shall be submitted to the Office of Planning for review and approval prior to the issuance of any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
3. Petitioner shall provide landscaping along the public road if applicable.
4. 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).
5. The property is located in a Limited Development Area (LDA) of the Chesapeake Bay Critical Area. Lot coverage is limited to 25% (1,500 square feet) and may be increased by 500 square feet (to 2,000 square feet) with mitigation. In addition, the 15% afforestation requirement must be met; this equates to 2 trees. All other LDA 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