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| IN RE: PETITION FOR VARIANCE | * | BEFORE THE |
| E/S Middle Road, 131' S of c/line of | | |
| Revolea Beach Road | * | ZONING COMMISSIONER |
| (905 Middle Road) | | |
| 15 th Election District | * | OF |
| 6 th Council District | | |
| | * | BALTIMORE COUNTY |
| Daniel Thomas, et ux | | |
| Petitioners | * | Case No. 2011-0099-A |

* * * * *

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, Daniel Thomas, and his wife, Jennifer Thomas. The Petitioners request a variance from Sections 1B02.3A.5, 1B02.3B and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling with a front yard average setback of 19 feet in lieu of the required 26 feet. The subject property and requested relief are more particularly described on the 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 Daniel and Jennifer Thomas, property owners. There were no Protestants or other interested persons present.

Testimony and evidence offered disclosed that the subject property, which is the subject of this variance request, consists of 11,880 square feet zoned D.R. 3.5. The property is not improved by any structure and is heavily wooded. It is virtually surrounded by wetlands as indicated in my prior Order in Case No. 08-315-A dated March 19, 2008. To the extent applicable, the Findings and Conclusions set forth in that Order are adopted by reference and incorporated herein. The Petition currently before me is to allow the relocation of the proposed single-family dwelling in order to reduce forest clearing and wetland impacts. The County

requires a 35 foot minimum setback from the wetlands and so the area for building a home on the property is very limited.

Mr. Thomas stated that there was a problem locating a reasonable size home on the buildable area of the lot while keeping 25' to 35' from the delineated wetlands. If he reduced the depth of the home to avoid the variance, the rooms would be too small and become unreasonable. Mr. Thomas testified that the new home would be occupied by his wife's mother, Debbie Smith, who wants to be close to the Thomases and her other daughter.

I find that there are special circumstances or conditions existing such as wetlands that are peculiar to the land which is the subject of the variance request and that strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship.¹ Furthermore, given the Zoning Advisory Committee (ZAC) comment received from the Department of Environmental Protection and Resource Management (DEPRM) dated October 25, 2010, I find that such a variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health and environmental wellbeing. That comment states in pertinent part:

“The zoning request will reduce forest clearing and wetland impacts, and mitigation will be required for any wetland impacts and/or forest clearing on this lot. Therefore, the subject zoning petition will conserve fish, wildlife, and plant habitat.”

After due consideration of all the testimony and evidence presented, I am persuaded to grant the variance.

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

¹ This Commission granted similar relief to the adjacent neighbor at 905 Middle River in Case No. 04-028-A. In that case, then Deputy Zoning Commissioner John V. Murphy permitted a front setback of 16 feet in lieu of the permitted 20 feet due to wetland constraints.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 8th day of December 2010 that the Petition for Variance seeking relief from Sections 1B02.3A.5, 1B02.3B and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed dwelling with a front yard average setback of 19 feet in lieu of the required 26 feet, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1. The Petitioners may apply for their building permits and be granted the same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their 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. The Petitioners must comply with the recommendations made by DEPRM and Development Plans Review in the ZAC comments, dated October 25, 2010 and October 5, 2010, respectively. A copy of these comments are attached hereto and made a part hereof.
3. The Petitioners shall submit building elevation drawings of the proposed dwelling to the Office of Planning for review and approval prior to the issuance of any permit.
4. When applying for a building permit, 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 in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

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