

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
S/S New Section Road, 990' NE c/line		
Seneca Road	*	ZONING COMMISSIONER
(3939 New Section Road)		
15 th Election District	*	OF
6 th Council District		
	*	BALTIMORE COUNTY
COHB, L.L.C.		
Petitioner	*	Case No. 2011-0114-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 legal owner of the subject property, COHB, L.L.C. As originally filed, the Petitioner requested variance relief from Section 1A04.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: **(1)** from Section 1A04.3.B.1.a to allow an existing lot of record to have a lot area of 0.195 acres in lieu of the required 1.5 acres; **(2)** from Section 1A04.3.B.3 to permit 25.1% building coverage in lieu of the allowed 15% in a R.C.5 zone; **(3)** from Section 1A04.3.A to allow a building height of 50 feet in lieu of the allowed 35 feet; and **(4)** from Section 1A04.3.B.2.b to permit setbacks from any lot line other than a street line of 6 feet (side yards) in lieu of the required 50 feet, and to allow a front yard setback of 36 feet to the centerline of the road in lieu of the minimum required 75 feet. The subject property and requested relief are more particularly described on the redlined site plan¹ and building height elevation drawing submitted which were accepted into evidence and marked as Petitioner’s Exhibits 1 and 5, respectively.

¹ At the outset of the hearing, Petitioner amended the site plan to respond to the Zoning Advisory Committee (ZAC) comment received from Laurie Hay, on behalf of the Office of Planning, dated October 28, 2010, and the concerns of adjacent neighbors, James and Barbara Hock (3941 New Section Road), and James and Joanne Hock (3937 New Section Road). The redlined amendments clarified that the side yard setbacks for the proposed replacement dwelling will be positioned 10 feet from the east and west side yard property lines, 65 feet from the bulkhead on Seneca Creek, and 30 feet from the centerline of New Section Road. The building height was reduced from 50 feet to a maximum of 44 feet. Since these amendments reduced the changes originally requested and were made without objection, Petitioner was permitted to proceed at the hearing as scheduled.

Appearing at the requisite public hearing in support of the requests were Thomas M. White and Edward A. O'Keefe, managing members of COHB, L.L.C., property owner, and Geoffrey C. Schultz, a professional land surveyor and consultant with McKee & Associates, Inc., who prepared the site plan and is assisting the Petitioner through the permitting process. As noted, the requested approval of the variances originally sought were contested. The opponents are adjacent property owners and included James N. Hock, Jr. (west side), and his parents Barbara C. and James N. Hock, Sr. (east side). There were no Protestants nor were there any interested persons present.

Testimony and evidence offered disclosed that the subject property is a rectangular shaped, improved waterfront lot, located on the south side of New Section Road with 60 feet of frontage on New Section Road, 178 feet deep and narrowing slightly to 52 feet at the Seneca Creek in Middle River. The property contains a gross area of 8,495 square feet, more or less, zoned R.C.5 and is improved with a modest one-story dwelling, 28' wide x 47' deep, built in 1957 and an existing 100 foot pier.² The Petitioner desires to redevelop the property with a new, 2-½ story, single-family dwelling; however, given the small area and width of the lot, the requested variances are necessary in order to proceed. As originally proposed, the dwelling would have been 38' wide x 58' deep (2,132 square feet) but has been reduced in size to 1,984 square feet.

Testimony disclosed that the property is also known as Lot 327 of the "Second Addition to Plat No. 2 of Bowleys Quarters" that was recorded on June 6, 1931 and therefore an older subdivision recorded in the Land Records of Baltimore County well prior to the County

² The O'Keefe family has owned the property and improvements that have been used as a summer home for several decades (since 1989). Both Edward O'Keefe and Thomas White have formed a limited liability company and wish to redevelop the property and retain its exclusive use for their families.

Council's adoption of the zoning regulations and the R.C.5 area and height controls. Thus, many of the lots in this community are undersized and cannot meet current lot width and area requirements for development purposes.³ As shown on the site plan, the Petitioner proposes razing the existing dwelling (and covered patio) and constructing the new home in essentially the same footprint location. The new house, as reconfigured to provide 10 foot side yard setbacks, will be a 2-½ story structure, 68' x 30' in dimension, at a height of 44 feet and will contain an elevator for the family's handicapped children with parking spaces under the raised first floor level coupled with the parking pad just off of New Section Road.

Additionally, as mentioned, the new building will be located approximately 65 feet from the bulkhead, consistent with the existing location. This is significant in that the new house will not block the view of the water from adjacent properties. While the proposed improvements will feature similar setbacks, the new building coverage will be in excess of the maximum 15% allowed, thus the requested relief in this regard is necessary

In further support of the variance request, Petitioner (and Jim Hock) introduced photographs of the subject property and surrounding areas. These photographs evidence that the property is served by public water and sewer (a grinder pump system was installed several years ago). Mr. Schultz opines that the granting of the variances requested would not have an adverse affect on any adjacent neighbors nor would granting of variance relief be detrimental to the health, safety and general welfare of the community. The Office of Planning found the

³ B.C.Z.R. Section 1A04.3.B.1.B(1) provides for an exception to minimum lot sizes. This section states in pertinent part, "the owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003, but does not meet the minimum acreage requirement, or does not meet the setback requirement of paragraph 2, may apply for a special hearing under Article 5 to alter the minimum lot size requirement ... ". The Zoning Review Office, having determined that the subject parcel of land was in the subdivision of "Bowleys Quarters" recommended filing a petition for variance relief under B.C.Z.R. Section 307 as opposed to a petition for special hearing. See Case Nos. 03-141-A; 03-293-A; 05-031-A; 05-412-A; 07-450-A; 09-178-SPHA, and 10-282-A involving houses on New Section Road where similar relief was granted through a variance hearing proceeding.

Petitioner's "building height" of 50 feet to be unobjectionable and in accordance with the spirit and intent of the R.C.5 regulations and Performance Standards and does not oppose this request. The Hock families, however, object to a 50 foot height variance and asked that it be eliminated or reduced to be more in keeping with existing homes in this locale. They urge that the spirit and intent of the regulations require a Petitioner to request the minimum relief necessary to permit a dwelling to be located on the lot. While appreciative of the Chesapeake Bay Critical Area (CBCA) regulations of – reducing impervious surfaces – a requirement to build above the floodplain elevation – and the need for additional safe storage space, I find that the petition can be amended to a lower height request of 44 feet. The base flood and flood protection elevation requirements almost automatically dictate that a proposed dwelling will begin with 10 or 11 foot height above ground level, leaving perhaps only 25 feet for the enclosed living areas of the dwelling height, including an adequate roof pitch.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. The ZAC comment received from the Department of Environmental Protection and Resource Management (DEPRM), dated October 26, 2010, indicates that the development of the subject property must comply with the Chesapeake Bay Critical Area Regulations. It also states the property is within a Limited Development Area (LDA) and Buffer Management Area (BMA) and must comply with the regulations related to these areas as well, including that impervious surfaces are limited to 31.25% and that 15% afforestation must be addressed. The ZAC comment from the Office of Planning indicates the Office does not oppose Petitioner's variance requests, as amended, but that the property must comply with the R.C.5 requirements. In order for Planning to prepare a statement of finding as to compliance, a litany of information must be submitted to the Planning Office, which includes photographs of existing

adjacent dwellings, building elevations, design information of all structures and appurtenances, and landscaping information.

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. It is clear that strict compliance with the regulations would result in a practical difficulty and unreasonable hardship for the Petitioners and prevent use of the property for a permitted purpose. The fact that this subdivision was recorded many years ago is persuasive. Moreover, there were no adverse comments submitted by any County reviewing agency and the revised proposal is consistent with the pattern of development in the neighborhood. Thus, I find that the relief requested is appropriate and that there will be no detrimental impact to adjacent properties or surrounding locale. However, as a condition of approval, the Office of Planning has requested that building elevation drawings of the proposed dwelling be submitted for their review and approval prior to the issuance of any permits to assure compatibility with existing houses in the neighborhood. Moreover, due to the property's waterfront location and its location within a floodplain, the proposed construction shall comply with Chesapeake Bay Critical Areas regulations and Federal Flood Insurance requirements, as set forth in the attached comments submitted by the Department of Environmental Protection and Resource Management (DEPRM) and the Development Plans Review Division.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of November 2010 that the Petition for Variance seeking relief from Section 1A04.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: **(1)** from Section 1A04.3.B.1.a to allow an existing lot of record to have a lot area of 0.195 acres in lieu of the required 1.5

acres; (2) from Section 1A04.3.B.3 to permit 23.4 % (1,984 square feet) building coverage in lieu of the allowed 15% (1,274 square feet) in a R.C.5 zone; (3) from Section 1A04.3.A to allow a building height of 44 feet in lieu of the allowed 35 feet; and (4) from Section 1A04.3.B.2.b to permit setbacks from any lot line other than a street line of 10 feet (side yards) in lieu of the required 50 feet, and to allow a front yard setback of 30 feet to the centerline of the road in lieu of the minimum required 75 feet, in accordance with Petitioner's Exhibit 1, be and the same is hereby GRANTED; subject, however, to the following restrictions:

1. The Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at his 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. Prior to the issuance of any permits, the Petitioners shall submit building elevation drawings of the proposed dwelling, including proposed building materials, color scheme, and architectural details, to the Office of Planning for review and approval to insure compatibility with existing houses in the area.
3. Compliance with Chesapeake Bay Critical Areas regulations and all other appropriate environmental, floodplain and B.O.C.A. regulations relative to the protection of water quality, streams, wetlands and floodplains.
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 taken in accordance with Section 32-3-401 of the Baltimore County Code (B.C.C.).

WJW:dlw

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