

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Poplar Road; 14 feet E of the		
intersection of extended c/l of Pine Road	*	DEPUTY ZONING
15 th Election District		
6 th Councilmanic District	*	COMMISSIONER
(1922 Poplar Road)		
	*	FOR BALTIMORE COUNTY
Robert and Dana Edmond		
<i>Petitioners</i>	*	CASE NO. 2011-0131-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, Robert and Dana Edmond. Petitioners are requesting Variance relief from Sections 1A04.3.B.2.b, 1A04.3.B.3, 301.1 and 400.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a front yard setback of 40 feet in lieu of the required 50 feet, side yard setbacks of 10 feet and 10 feet in lieu of the required 50 feet, building coverage of 15.8% in lieu of the required 15%, a 30 foot front and 10 foot side setbacks for an open porch in lieu of the required 37.5 feet, and an accessory structure (shed) in the front yard in lieu of the required rear yard, for a replacement dwelling and existing shed on an existing lot of record. 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 requests was Petitioner Robert Edmond and his father-in-law, Carl Maynard. Also appearing in support of the relief was David Billingsley with Central Drafting & Design, Inc., the professional land surveyor who prepared the site plan. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is rectangular shaped, though irregular at the shoreline, and contains approximately 0.218 acre or 9,475 square feet, more or less, zoned R.C.5. The property is located on the north side of Poplar Road with water frontage

on Sue Creek, east of Back River Neck Road and north of Holly Neck Road, in the Middle River area of Baltimore County. The subject site is improved with an existing single-family dwelling consisting of approximately 1,416 square feet. According to a printout of the Real Property Data Search that was marked and accepted into evidence as Petitioners' Exhibit 2, the dwelling was constructed in 1951. The Deed of Record marked and accepted into evidence as Petitioners' Exhibit 3 indicates Petitioners acquired the property in 2003; moreover, the subdivision plat of "Cedar Beach" that was marked and accepted into evidence as Petitioners' Exhibit 4 reveals that the subdivision, including Lot 59 -- the subject property -- was platted and recorded on April 21, 1925.

An aerial photograph was marked and accepted into evidence as Petitioners' Exhibit 6 and depicts the layout of the existing improvements, including a shed on the water side and a parking pad along the property's frontage on Poplar Road. At this juncture, Petitioners desire to raze the existing dwelling and replace it with a new dwelling. As illustrated on the site plan, the new dwelling would be in substantially the same footprint as the existing structure, but would actually be placed more parallel to the existing side yards. This would result in more consistent side yard setbacks than what exists presently. The dwelling would measure approximately 30 feet wide by 50 feet deep.

In support of the variance requests, Mr. Billingsley indicated that the zoning relief is driven primarily by the fact that the subject lot was laid out many years ago, well prior to the adoption of any Zoning Regulations in Baltimore County. In attempting to improve the property with a newer, more up to date dwelling, Petitioners are unable to meet the front and side yard setback requirements. This is further compounded by the current R.C.5 zoning on the property which makes it most difficult to meet those requirements under any circumstances. In addition, as to the building coverage issue, Mr. Billingsley pointed out that Petitioners desire to build

substantially on the same footprint, but as a result, would still slightly exceed the 15% limitation required in the R.C.5 Zone to 15.8% building coverage. Mr. Billingsley argued that this 15% requirement is important in the traditional R.C.5 areas, where newly created lots must be at least 1.5 acres and many are much larger than that. The 15% building coverage on a minimum 1.5 acre lot (65,340 square feet) would allow a building coverage of almost 10,000 square feet. In the instant matter, the proposed replacement dwelling would only have building coverage of approximately 1,500 square feet.

Finally, Mr. Billingsley indicated that other homes that have been built in the community as replacement dwellings are on similarly small or narrow lots in the R.C.5 Zone, and demonstrate a pattern of development that is consistent with the neighborhood, often with setbacks of less than 10 feet, building coverage in excess of 15%, and also with substantial heights. Photographs of the subject property were marked and accepted into evidence as Petitioners' Exhibits 7A through 7G. It is also noteworthy that, although the property is required to meet base flood and flood protection elevations, Petitioners plan to stay within the 35 foot height limitation and no variance is required or requested.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Bureau of Development Plans Review dated October 21, 2010. The comments indicate 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. Comments were received from the Department of Environmental Protection and Resource Management which indicates that development of the property must comply with the Chesapeake Bay Critical Area Regulations.

Comments were received from the Office of Planning dated October 28, 2010 which indicates that it does not oppose Petitioners' request, provided the construction complies with the current R.C.5 requirements. To prepare this statement of finding, the Office of Planning will require the submission of additional information, which will be expounded on further in this Order.

This case, as with other properties in the area that are zoned R.C.5, presents an increasingly common set of circumstances before this Commission; namely, waterfront properties in eastern Baltimore County that are zoned R.C.5, but were platted and recorded decades ago -- certainly prior to the adoption of Zoning Regulations in these areas -- and thus do not meet the current zoning requirements for setbacks and building coverage. In addition, because these areas are within the floodplain, the base flood and flood protection elevations also make it increasingly difficult for property owners to replace aged, often dilapidated original structures that were relatively small and intended as summer cottages with new homes of sufficient size that are often used as a primary residences on a relatively small lot.

Thus, the task for this Commission is to review the purpose of the R.C.5 Zone and interpret that in the context of these waterfront properties. Section 1A04.1.B states that the R.C.5 zoning classification is established in order to: (1) provide for rural-residential development in suitable areas in which basic services are not anticipated, (2) eliminate scattered and generally disorderly patterns of future rural-residential development, (3) assure that encroachments onto productive or critical natural resource areas will be minimized, and (4) provide a minimum lot size which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems.

Turning now to the instant matter, I am persuaded to grant the requested relief. Although the proposed dwelling for the subject property does not meet the front and side yard setback limitations, in my view, this lot -- and others like it -- is clearly consistent with the purpose of the R.C.5 zoning classification, and therefore meets the spirit and intent of the Zoning Regulations.

As to the concern over the provision of basic services and adequate area for on-site sewer and water systems, in this case the property does have access to existing public water and sewer services. As to the issue of scattered and generally disorderly patterns of future rural-residential development, that is also not impacted here. This property is a lot of record and has been in existence for 85 years. As depicted in the record plat accepted into evidence as Petitioners' Exhibit 4, it was platted and recorded as part of a planned layout of waterfront properties in Cedar Beach. Regarding the encroachments onto productive or critical natural resource areas, this property is situated in the Chesapeake Bay Critical Area and is subject to stringent regulations at the State and local level, including afforestation and mitigation in environmentally sensitive areas. DEPRM's careful watch over these issues will minimize the potential impact of this development in those areas. In addition, it is noteworthy that the new home 15.8%, only slightly higher than the maximum of 15%.

I also find the property unique in a zoning sense in that the setback and height constraints cause the subject property to be disproportionately impacted by the Zoning Regulations as compared with other surrounding properties, making it virtually impossible for Petitioner to have any dwelling erected on the property. The property is only 50 feet wide and the setback for each side is 50 feet. Another unique feature of the property is that the floodplain traverses through the middle of the property.

Finally, I find that the variance requests 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. The new dwelling will actually decrease some of the side yard deficiencies that the existing dwelling has under the current Regulations.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by Petitioners, I find that Petitioners' variance requests should be granted.

THEREFORE, IT IS ORDERED this 9th day of December, 2010 by this Deputy Zoning Commissioner that Petitioners' Variance request from Sections 1A04.3.B.2.b, 1A04.3.B.3, 301.1 and 400.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a front yard setback of 40 feet in lieu of the required 50 feet, side yard setbacks of 10 feet and 10 feet in lieu of the required 50 feet, building coverage of 15.8% in lieu of the required 15%, a 30 foot front and 10 foot side setbacks for an open porch in lieu of the required 37.5 feet, and an accessory structure (shed) in the front yard in lieu of the required rear yard, for a replacement dwelling and existing shed on an existing lot of record, be and are 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. The base flood elevation for this site is 8.5 feet (NAVD 88). The flood protection elevation for this site is 9.5 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.
3. 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.
4. 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. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the *International Building Code*.
5. 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).

6. The lot is within a Limited Development Area (LDA) and a Buffer Management Area (BMA) of the Chesapeake Bay Critical Area. Lot coverage is limited to 31.25% with mitigation required for lot coverage above 25% and the 15% afforestation requirement must be met. In addition, the BMA requirements for development within the 100 foot buffer must be met.
7. Prior to obtaining a building permit, Petitioners shall submit the following information to the Office of Planning for their determination that the proposed structure meets the R.C.5 Performance Standards.
 - a. Submit photographs of existing adjacent dwellings to the Office of Planning.
 - b. Submit building elevations (all sides) of the proposed dwelling to the Office of Planning for review and approval. The proposed dwelling shall be compatible in size and architectural detail as that of the existing dwellings in the area. Ensure that the exterior of the proposed building(s) use the same finish materials and architectural details on the front, side and rear elevations. Use of quality material such as brick, stone or cedar is encouraged.
 - c. Design all decks, balconies, windows, dormers, chimneys and porches as a component of the building following dominant building lines. Decks shall be screened to minimize visibility from a public street.
 - d. Design all accessory structures at a scale appropriate to the dwelling and design garages with the same architectural theme as the principal building, on the site, providing consistency in materials, colors, roof pitch and style.
 - e. Provide landscaping along the public road, if consistent with the existing streetscape.

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