

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NW side of Chestnut Road, 170 feet		
E of Seneca Road	*	OFFICE OF ADMINISTRATIVE
15 th Election District		
6 th Councilmanic District	*	HEARINGS FOR
(3910 Chestnut Road)		
	*	BALTIMORE COUNTY
Jerry William Wisner		
<i>Petitioner</i>	*	CASE NO. 2011-0172-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by the legal owner of the subject waterfront property, Jerry William Wisner. Petitioner is requesting Variance relief from Sections 1A04.3.B.2.b, 1A04.3.B.3 and 303.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a new dwelling and open projection (deck) with side lot line setbacks of 10 feet each in lieu of the required 50 feet and 37.5 feet, respectively, and to allow 16.02% building coverage in lieu of the maximum allowed 15%. The subject property and requested relief is more fully depicted 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 was Petitioner Jerry William Wisner and Jeff Geddes with Paragon Custom Homes LLC, builder.

Testimony and evidence offered revealed that the subject property is rectangular in shape, contains approximately 13,050 square feet or 0.3 acre, more or less, zoned RC 5. The property is approximately 50 feet wide by 279.40 feet deep and is located on the northwest side of Chestnut Road, 170 feet east of Seneca Road. The property has water frontage on Seneca Creek in the Bowleys Quarters area of Baltimore County. The subject property is improved with an existing

one story dwelling of 480 square feet and an existing wood shed and is served by public water and sewer.

Further evidence revealed that the existing structure which is to be removed, was built in 1922 and that the family has utilized the property as a vacation home for almost 90 years. Additionally, testimony established that the subject lot occupies high topographical land in the area relative to the other lots in the immediate area and is adjacent to an exceedingly larger triangular piece of undeveloped property.

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 November 29, 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 (DEPRM) dated December 22, 2010 which states that DEPRM reviewed the subject zoning petition for compliance with the goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14 and offered the following comments:

1. This lot is located within a Limited Development Area (LDA) and Buffer Management Area (BMA) of the Chesapeake Bay Critical Area (CBCA). The proposed dwelling will be farther from the water than the existing dwelling. Lot coverage is limited to 25%, with a maximum of 31.25% with mitigation for amount over 25%. The CBCA lot coverage limit and the BMA requirements will minimize adverse impacts on water quality that result from development activities.
2. The proposed development must comply with all LDA and BMA requirements, including the 15% afforestation requirement and CBCA lot coverage requirements, prior to building

3. The proposed development will be required to meet all LDA and BMA requirements and therefore will be consistent with established land use policies for development in the Chesapeake Bay Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

The comment received from the Office of Planning dated December 10, 2010 likewise does not oppose Petitioner's request, provided the construction complies with the current R.C.5 requirements. In order to make this determination, the Office of Planning will require the submission of additional information sufficient to establish the applicable performance standards for a building permit in an R.C. 5 zone.

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 subject site is, to my mind, unique by virtue of its topography in relation to the other properties in the area, its drainage as the high property in the immediate vicinity, and its location relative to the undeveloped triangular shaped property. I further find that, having established the unique nature of the subject site in relation to its immediate neighbors, there is certainly practical difficulty required under the law by virtue of the fact that the 50 foot width disproportionately impacts the property from being utilized for an approved residential purpose, and therefore, the granting of the variance is clearly consistent with the purpose of the R.C. 5 zoning classification, and therefore meets the spirit and intent of the Zoning Regulations. I further find that the granting of the relief as set forth herein can be accomplished without injury to the public health, safety, and general welfare. Therefore, in all manner and form, I find that the variance requested can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R. as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995).

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

THEREFORE, IT IS ORDERED this 24th day of January, 2011 by this Administrative Law Judge that Petitioner's Variance requests from Sections 1A04.3.B.2.b, 1A04.3.B.3 and 303.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a new dwelling and open projection (deck) with side lot line setbacks of 10 feet each in lieu of the required 50 feet and 37.5 feet, respectively, and to allow 16.02% building coverage in lieu of the maximum allowed 15% be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for his building permit 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. Prior to obtaining a building permit, the Petitioner shall submit the following information to the Office of Planning for their determination that the proposed structure meets the RC 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 it is consistent with the existing streetscape.

3. The proposed development must comply with all Limited Development Area (LDA) and Buffer Management Area (BMA) requirements, including the 15% afforestation requirement and CBCA lot coverage requirements, prior to building permit approval.
4. The base flood elevation for this site is 8.5 feet [NAVD 88].
5. The flood protection elevation for this site is 9.5 feet.
6. 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.
7. 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.
8. The building engineer shall require a permit for this project.
9. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
10. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.
11. When applying for a building permit, the site plan filed must reference this case and set forth and address the conditions and restrictions of this Order.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

SIGNED
LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:pz