

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
N/Side of Chestnut Road, 600' NE from	*	OFFICE OF
Seneca Road		
15 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
6 <sup>th</sup> Councilmanic District		
<b>(4022 Chestnut Road)</b>	*	FOR BALTIMORE COUNTY
Judith Ann Pierce and	*	
Gregory and Barbara Maliszewski		
<i>Legal Owners</i>	*	<b>CASE NO. 2011-0225-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Variance filed by the legal property owners, Judith Ann Pierce and Barbara A. & Gregory J. Maliszewski. The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a lot area of 28,688 square feet or 0.659 acre in lieu of the required 1 1/2 acre for a single-family dwelling. The Variance is to permit side yards of 10 feet and 10 feet in lieu of the required 50 feet for a replacement dwelling and to permit an accessory use (swimming pool) in the front yard in lieu of the required rear yard pursuant to Sections 1A04.3.B.2 b and 400.1 of the B.C.Z.R. 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 Special Hearing and Variance requests was Barbara and Gregory Maliszewski, property owners, and David Billingsley with Central Drafting & Design, Inc., the consultant who prepared the site plan and is assisting the Petitioners in the permitting process. There were no Protestants or other interested persons at the hearing.

Testimony and evidence offered revealed that the subject property is located at the north side of Chestnut Road, just northeast from Seneca Road, in the Bowleys Quarters area of Baltimore County.

The subject property comprises 0.659 acre more or less and is zoned RC 5. The property is a waterfront lot located along Seneca Creek in Bowleys Quarters. At the present time, the property is improved with an existing temporary double wide trailer whereupon the property owners have been residing for some time. In addition to the manufactured home, there is also an old single family dwelling which was constructed in 1921 that is located on the waterfront portion of the lot. The property owners are desirous of tearing down the old single family dwelling which has been abandoned some years ago due to its uninhabitability. The owners are now desirous of moving forward with the construction of their new three story dwelling on the property as is depicted on Petitioners' Exhibit 1, the site plan submitted into evidence. They intend to obtain a razing permit to tear down the 90 year old abandoned dwelling and a new building permit to construct their new home. They will continue to reside in the manufactured house until such time as a use and occupancy permit is obtained for their new home.

Discussions ensued with the property owners regarding the removal of the manufactured house from the property once a use and occupancy permit is issued for their new home. The owners intend to move into this new home and will have 60 days within which to have the old manufactured house removed from the property. It is not permissible to maintain two dwelling units on the same property. Therefore, as a condition of approval of the special hearing and variance relief the property owners will be required to remove the manufactured house from the site.

In addition to the construction of the new home, the Petitioners are also requesting to locate a new swimming pool which will be located in the front yard of their property. Testimony

revealed that the front of the house will face toward Seneca Creek thereby causing the swimming pool to be located in the front yard and additional variance relief being necessary.

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 February 7, 2011, which indicates that it does not oppose the request, provided information being submitted to the Office as follows:

1. Photographs of existing adjacent dwellings.
2. Submit building elevations (all sides) of the proposed dwelling for review and approval prior to the hearing. 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) uses 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.
3. 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.
4. 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.
5. Provide landscaping along the public road, if consistent with the existing streetscape.

Also, comments were received from the Department of Environmental Protection and Sustainability (DEPS) dated February 15, 2011. DEPS has 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. Based upon this review, they offer the following comments:

1. This waterfront property is located in a Limited Development Area and a Buffer Management Area within the Chesapeake Bay Critical Area. Development of this property must comply with a maximum lot coverage limit of 5,445 square feet with mitigation for the lot coverage amount over 25%, must meet restrictions on development within the 100-foot tidal buffer, and must meet a 15% tree cover requirement. Based on this, DEPS has determined that adverse impacts on water quality from the pollutants discharged from the proposed development can be minimized with compliance and mitigation pursuant to

- Critical Area requirements. Mitigation requirements may include removal of lot coverage and the planting of native trees and shrubs.
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 permit approval. Therefore the subject zoning petition will conserve fish, wildlife, and plant habitat.
  3. The proposed development is permitted under the State-mandated Critical Area regulations provided that development is in compliance with all Critical Area requirements. Lot coverage on the property and within the tidal buffer is limited. Compliance with the Critical Area requirements, and mitigation can allow the subject development to be consistent with established land use policy 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.
  4. There needs to be verification that the old well and septic have been properly abandoned/back-filled, at least prior to approval of the razing permit.

In addition, comments were received from the Bureau of Development Plans Review, dated February 2, 2011, 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.

Having considered the testimony and evidenced offered at the hearing, there is no reason not to approve the special hearing and variance requests made by the Petitioners.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's requests for special hearing and variance should be granted.

THEREFORE, IT IS ORDERED this 17<sup>th</sup> day of March, 2011, by the Administrative Law Judge, that Petitioners request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a lot area of 28,688 square feet or

0.65 9 acre in lieu of the required 1 1/2 acre for a single-family dwelling, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Variance request to permit side yards of 10 feet and 10 feet in lieu of the required 50 feet for a replacement dwelling and to permit an accessory use (swimming pool) in the front yard in lieu of the required rear yard pursuant to Sections 1A04.3.B.2 b and 400.1 of the B.C.Z.R., be and is hereby GRANTED in accordance with the variance area shown on the approved site plan.

The relief granted is subject to the following conditions:

1. Petitioners may apply for their building 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 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. Petitioners must comply with the ZAC comments submitted by the Office of Planning, dated February 7, 2011, the Department of Environmental Protection and Sustainability (DEPS), dated February 15, 2011, and the Bureau of Development Plans Review, dated February 2, 2011. Copies of these comments are attached and made a part hereof.
3. Petitioners shall be required to remove the manufactured house (trailer) within which they are living at this time, within 60 days from the date of their use and occupancy permit for their new home.

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

Signed  
TIMOTHY M. KOTROCO  
Administrative Law Judge  
for Baltimore County

TMK/pz

Attachments