

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
W/Side of Beechwood Avenue, 65' N of c/line of	*	OFFICE OF
Bayside Drive		
15 th Election District	*	ADMINISTRATIVE HEARINGS
6 th Councilmanic District		
(1820 Beechwood Avenue)	*	FOR BALTIMORE COUNTY
Vincent J. and Karen M. Bonolis		
<i>Petitioners</i>	*	Case No. 2011-0280-SPHA

* * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Variance filed by Vincent J. and Karen M. Bonolis, the legal property owners. Petitioners are requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit two houses (existing) on one R.C.5 lot pursuant to Section 1A04.2.A.2 of the B.C.Z.R. Petitioners are also requesting Variance relief from Sections 1A04.3.B.1.b.1, 1A04.3.B.1.a, 1A04.3.B.2.b and 1A04.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit 11 ft. side yards, in lieu of the required 50 ft., 37 ft. in lieu of the required 50 ft. to bulkhead, to permit lot coverage of 37% in lieu of the maximum 15%, and to permit two houses on a lot with a gross square footage of 12,500 square ft. in lieu of the required 3 acres. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 7.

Appearing at the public hearing in support of the requested relief were Petitioners Vincent J. and Karen M. Bonolis, and Bernadette Moskunas with Site Rite Surveying, Inc., the surveying company who prepared the site plan. Carl Maynard, an area resident active in community affairs, attended the hearing and expressed concerns regarding the requested relief.

Testimony and evidence offered revealed that the subject property is situated on the waterfront (Back River) and is located in the Evergreen Park Community. The property is .287

acres and is zoned RC 5, and is improved by two structures. Petitioners presented evidence (Exhibit 3) establishing that both structures on the lot have been used as residential dwellings “occupied by the home owners dating back at least 1945.” Petitioner testified that both dwellings were severely damaged in Hurricane Isabel, and that they were only able to afford to reconstruct one of the dwellings initially, but now seek to reconstruct (and enlarge) the second structure/dwelling on the lot. As will be discussed later, the buildings qualify as nonconforming structures under State and County law, and under settled case law and the B.C.Z.R. (§104.2) nonconforming structures can be reconstructed after a casualty loss such as a fire (or in this case, a hurricane). Though B.C.Z.R. §104.2 provides only a two year “window” for such reconstruction, Baltimore County authorities adopted special procedures for and were indulgent concerning restoration of properties damaged by Hurricane Isabel.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability (DEPS), dated April 20, 2011, as follows:

“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, we offer the following comments:

1. This 12,150 square foot (area above mean high water used for Critical Area) waterfront property is located in a Limited Development Area and a Buffer Management Area within the Chesapeake Bay Critical Area and must comply with all requirements of Baltimore County Code Article 33, Title 2 Chesapeake Bay Critical Areas Protection. Based on the Code, the lot coverage area on the property is limited to 25% (3,038 square feet), or a maximum of 31.25% (3,797 square feet) if approved and with mitigation for the amount over 25%. The lot coverage on the property currently exceeds the maximum allowed, and may require removal of lot coverage. It must be determined when the existing lot coverages were added to the property in order to determine compliance with Critical Area law. At no time can the lot coverage exceed the existing amount, and the existing amount may require reduction. In addition, a 15% forest cover (4 trees) must exist on each lot at all times. Mitigation requirements can increase the number of trees required on the site. A 100-foot tidal buffer measured off mean high water covers almost half the property. BMA requirements restrict the location and area of structures allowed within this buffer. The location and size of the proposed dwelling may require adjustment to meet BMA requirements. 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 subject development can meet the requirement to conserve fish, wildlife, and plant habitat by complying with all Critical Area requirements including mitigation.
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 is limited and may not exceed the amount allowed by Critical Area law. Compliance with the Critical Area requirements, including mitigation that may include lot coverage removal and planting of native trees, 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”.

In addition, a ZAC comment was received by the Office of Planning, dated April 8, 2011, which recommended the following:

“The Office of Planning has reviewed the petitioner’s request and accompanying site plan. The Office of Planning recommends denial of the request to permit two dwelling units on one lot. The RC5 zone does not permit more than one primary residence on a lot. The dwelling unit in the garage building should be abandoned. The Office of Planning has no objection to the remaining variance requests and construction of a replacement dwelling. However, this office is required to provide a statement of finding to the Zoning Commissioner indicating how the proposed construction complies with the current RC5 requirements. To prepare the statement of finding, the following information must be submitted to this office:

1. Photographs of existing adjacent dwellings.
2. Submit building elevations (all sides) of the proposed dwelling to this office 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.”

After due consideration of the testimony and evidence presented, I am persuaded to grant, in part, the relief requested.

As to the variance requests, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, the site conditions have existed as they are for years, and Petitioner merely seeks to “legitimize” these side yard and bulkhead setbacks, lot coverage and the undersized lot containing two dwellings. As such, those variance requests are granted.

That leaves for consideration the request for special hearing relief to permit 2 houses on 1 RC 5 lot. The SDAT records reflect the structures(s) were built in 1924, long before the B.C.Z.R. were adopted. As such, it seems clear Petitioner enjoys nonconforming use status with respect to the 2 dwellings on the lot, and as stated above, Petitioner submitted evidence – that was unrebutted – establishing that both structures were used as dwellings since 1945. But that is not the end of the story. Petitioners seek to enlarge the nonconforming structure (now 20’x49’, or 980 square feet) to 1,424 square feet (28’x51’), which is a greater than 25% increase, which is forbidden under B.C.Z.R. §104.3. As such, the special hearing relief is granted, to the extent that the lot can contain the 2 dwellings, although the waterfront structure cannot be reconstructed larger than 1,225 square feet (i.e., it can be enlarged by 245 square feet) pursuant to the dictates of B.C.Z.R. §104.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioners’ special hearing and variance requests should be granted in part and denied in part.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County this 4th day of May, 2011 that Petitioners’ Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit two houses (existing) on one R.C.5 lot pursuant to Section 1A04.2.A.2 of the B.C.Z.R., be and is hereby GRANTED, and

IT IS FURTHER ORDERED that if the waterfront nonconforming structure is reconstructed, it can be enlarged by only 245 square feet (i.e., the dwelling can be no larger than 1,225 square feet); and

IT IS FURTHER ORDERED that Petitioners' Variance request from Sections 1A04.3.B.1.b.1, 1A04.3.B.1.a, 1A04.3.B.2.b and 1A04.3.B.3 of the B.C.Z.R. to permit 11 ft. side yards, in lieu of the required 50 ft., 37 ft. in lieu of the required 50 ft. to bulkhead, to permit lot coverage of 37% in lieu of the maximum 15%, to permit two houses on a lot with a gross square footage of 12,500 square ft. in lieu of the required 3 acres, be and is hereby GRANTED.

The relief granted herein is subject to the following conditions:

1. Petitioners, before being issued building permits, must satisfy each of the comments/conditions (of the Department of Environmental Protection and Sustainability and the Office of Planning) set forth in pp. 2-3 of this Opinion.
2. Petitioners are advised that they may apply for any required 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 for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:pz