

IN RE: <b>PETITIONS FOR VARIANCE</b>	*	BEFORE THE
W/S Railway Avenue, 60' & 110' N c/line		
Tolson Avenue	*	ZONING COMMISSIONER
<b>(Railway Avenue – Lots 46 &amp; 47)</b>		
<b>(6740 Railway Avenue – Lots 44 &amp; 45)</b>	*	OF
12 <sup>th</sup> Election District		
7 <sup>th</sup> Council District	*	BALTIMORE COUNTY
Jennifer Rivas, <i>Legal Owner</i>	*	<b>Case Nos. 08-397-A &amp;</b>
Steve Carroll t/a Mason Properties,		<b>08-398-A</b>
<i>Contract Purchaser</i> (Lots 46 & 47)	*	
Petitioners		

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before the Zoning Commissioner for consideration of Petitions for Variance filed by the legal owner of the subject properties, Jennifer Rivas, and the contract purchaser, Steve Carroll d/b/a Mason Properties, for two (2) adjacent properties known as 6740 Railway Avenue (Lots 44 & 45) and Lots 46 & 47 Railway Avenue. Since the properties are owned by the same person and are located adjacent to one another, the two cases were heard contemporaneously. In Case No. 08-397-A (Lots 46 & 47), the Petitioners, Jennifer Rivas and Steve Carroll, as originally filed, request variance relief from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed single-family dwelling on an undersized lot with a lot width of 50 feet in lieu of the required 55 feet. At the outset of the hearing, however, Petitioners amended their petition asking to include as well approval of the subject property as an undersized lot, pursuant to Section 304 of the B.C.Z.R. In Case No. 08-398-A (6740 Railway Avenue), Petitioner, Jennifer Rivas, requests similar relief. Specifically, relief is requested from B.C.Z.R. Section 1B02.3C.1 to permit an existing single-family dwelling on an undersized lot with a lot width of 50 feet in lieu of the minimum required lot width of 55 feet. The subject properties and requested relief are more particularly described on the site plan

submitted in each case, which were accepted into evidence and respectively marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Jennifer Rivas, property owner, Steve Carroll, contract purchaser (Lots 46 & 47), and Ron Howard, a realtor with ReMax assisting the Petitioners. There were no Protestants or other interested persons present. It is noted that I received confirmation from the adjoining and adjacent property owner and tenant, Carolyn Haggie, indicating that she does not oppose Petitioners' requested zoning relief.

Testimony and evidence offered revealed that the subject adjacent parcels are located on the west side of Railway Avenue, just north of Tolson Avenue in Dundalk. The lots are identified as Lots 44 through 47 on the plat of subdivision of Fairlawn, which is an older subdivision that was platted and recorded in the Land Records prior to 1945, thus prior to the first set of zoning regulations in Baltimore County. As is often the case with older subdivisions, many of the lots are undersized and do not meet current area and width requirements. In this regard, each of the subject lots contains a gross area of over 6,000 square feet (Lots 44 & 45 [6740 Railway Avenue] as combined are 50' wide x 135' deep and contain 6,750 square feet; Lots 46 & 47 contain a gross area of 6,750 square feet), more or less, zoned D.R.5.5. Jennifer Rivas has owned all of the lots since October 16, 2007 and resides at the 6740 Railway address with her family. She desires to sell the adjacent lots to Mason Properties for development with a new two-story single-family dwelling. Testimony indicated that this new dwelling will meet all front, side and rear setback requirements. Relief is requested to approve lot widths of 50 feet respectively and to approve the properties as undersized lots (width at building line less than that required by the area regulations) to permit the proposed development. Photographs and real

property data search records obtained from the Maryland Department of Assessments and Taxation illustrate the pattern of development and show that the subject properties and surrounding community were built on combined 25-foot wide lots which is also confirmed by the Office of Planning in its Zoning Advisory Committee (ZAC) comment. There is no physical evidence that the subject properties were used or consolidated with any other lot to invoke the doctrine of merger as described in *Friends of the Ridge v. Baltimore Gas & Electric Company* 352 Md. 645 (1999) and *Remes v. Montgomery County* 387 Md. 52 (2005). Moreover, the uncontradicted evidence clearly establishes that there has never been a desire to combine or merge the several parcels (Lots 44-45 – Tax Account No. 1214065370) with (Lots 46-47 – Tax Account No. 1214065371).

Testimony offered in support of the requests was that without variance relief, Lots 46 & 47 could not be developed. Obviously, strict compliance with the regulations would create a hardship as the zoning regulations result in a denial of a reasonable and sufficient use of the property (*See Belvoir Farms v. North* 355 Md. 259 [1999]). Moreover, based on the testimony and evidence presented, the Petitioners are entitled to their variances as they have met the requirements of Section 304 of the B.C.Z.R. (*See Mueller v. People's Counsel for Baltimore County* 177 Md. App. 43 [2007]). In my view, the relief requested will not result in any detriment to the health, safety and general welfare of the surrounding locale and, therefore, would meet the spirit and intent of Section 307 for relief to be granted. The proposed dwelling will meet all front, side and rear setback requirements and will be situated on the lots consistent with other houses in the community. Building elevations received as Petitioners' Exhibit 2 in Case No. 08-397-A were reviewed and approved by John Alexander with the Office of Planning

at the hearing on April 24, 2008. The only deficiency in both of these instances is the lot width, which is 5 feet shy of the required 55 feet.

Pursuant to the resubdivision of the property, the advertisement, posting of the properties and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 30<sup>th</sup> day of April 2008, that the Petition for Variance filed in Case No. 08-397-A, seeking relief from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed buildable lot with a width of 50 feet in lieu of the minimum required 55 feet, and approval of the subject property (Lots 46 & 47) as an undersized lot, pursuant to Section 304 of the B.C.Z.R., for a proposed single-family dwelling, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance filed in Case No. 08-398-A seeking relief from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing single-family dwelling on an undersized lot with a width of 50 feet, in lieu of the minimum required 55 feet, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED subject to the following conditions:

1. The Petitioner(s) may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner(s) 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.

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

\_\_\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner  
of Baltimore County