

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Holly Beach Road; 270 feet W		
of the c/l of Henrietta Avenue	*	DEPUTY ZONING
15 th Election District		
6 th Councilmanic District	*	COMMISSIONER
(2610 Holly Beach Road)		
	*	FOR BALTIMORE COUNTY
Karen Treat and Alverta Tutchton		
<i>Petitioners</i>	*	CASE NO. 2010-0152-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, Karen Treat and Alverta Tutchton. Petitioners are requesting Variance relief as follows:

- From Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a 3 foot setback (rear) in lieu of the required 50 feet from any lot line; and
- From Section 1A04.3.B.2.b of the B.C.Z.R. to permit a 22 foot setback (front) in lieu of 50 feet from any lot line; and
- From Section 400.1 of the B.C.Z.R. to permit a garage in the front yard in lieu of the required rear yard; and
- From Section 1A04.3.B.3 of the B.C.Z.R. to permit 21% lot coverage in lieu of the permitted 15%.

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, and the colorized site plan that highlighted the requested relief, which was marked and accepted into evidence as Petitioner's Exhibit 2.

Appearing at the requisite public hearing in support of the variance requests was Petitioner Karen Treat and Arnold Jablon, Esquire, attorney for Petitioner. Also appearing in support of the requested relief was David Martin with Martin & Phillips, the landscape architect who prepared and sealed the site plan. Appearing as Protestants in opposition to the requested relief were adjacent neighbors David and Lara Jacobs of 2606 Holly Beach Road, and their attorney Jason Vettori, Esquire.

Testimony and evidence offered revealed that the subject property is rectangular-shaped and contains approximately 10,300 square feet or 0.24 acre, more or less, zoned R.C.5. The property is located on the north side of Holly Beach Road, north of Holly Neck Road and east of Back River Neck Road, in the Essex - Middle River area of Baltimore County. The property has water frontage on Middle River, near the area where Middle River meets Sue Creek to the west. As shown on the site plan, the property is improved with a two-story framed single-family dwelling, approximately 25 feet wide by 46 feet deep, along with an existing above ground pool and deck surrounding the pool. The property also has an existing concrete parking pad approximately 44 feet wide by 15 feet deep fronting along Holly Beach Road, a concrete walk leading to the pool area, and a paver patio measuring approximately 25 feet wide by 14 feet deep located next to the home on the water side of the home.

At this juncture, Petitioner desires to add several improvements to her home. As shown on the colorized site plan that was accepted into evidence as Petitioner's Exhibit 2, Petitioner proposes to construct a sunroom addition on the same footprint as the existing paver patio, a one-story 12 foot by 24 foot one car garage, an 11 foot by 12 foot deck extension and new stairs leading from the pool, a rectangular 12 foot by 20 foot gazebo, and a 30 foot by 30 foot flagstone patio. All of these improvements would be located on the water side of the property, and the

proposed garage and gazebo would be located in close proximity to the side yard at the west side of the property. In order to construct several of these improvements, Petitioner is requesting variance relief of 3 feet at the eastern property line and 22 feet at the western property line for the proposed sunroom addition, as well as relief in order to construct the proposed garage in the front yard in lieu of the required rear yard, and to permit 21% lot coverage in lieu of the permitted 15% for all of the improvements.

Petitioner's landscape architect, Mr. Martin, was accepted as an expert and provided testimony concerning the property and the need for the variance relief. The property is known as Lot 16 of the Holly Beach subdivision that was platted and recorded on February 14, 1916. A copy of the record plat was marked and accepted into evidence as Petitioner's Exhibit 4. The lot as it currently exists is nonconforming in that it does not meet the minimum acreage and setback requirements for the R.C.5 Zone. The lot itself is relatively flat, however, it falls significantly toward the shoreline, where the grade drops to water level. The existing dwelling has long been established and was once a commercial building constructed in 1924. Unlike other dwellings in the neighborhood, the orientation of the dwelling is unusual in that it is pulled very close to the road and has a side front building face, such that the "front" of the dwelling faces west, the "rear" faces east, and the "sides" face the water and the road, respectively. Due to this unusual orientation, as shown on the site plan, there is virtually no rear yard to the property, the side yard on the road side of the property is very small and serves as a parking pad for vehicles. Hence, the only area for improvements is what amounts to a very spacious side yard on the water side of the property, as depicted in the aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 6.

In support of the requested zoning relief for the proposed sunroom, Mr. Martin explained that the sunroom addition would be located off the side of the home on the water side of the property, in place of the existing paver patio. He stressed that there is no other practical location for this improvement. Because of the R.C.5 zoning of the property and the orientation of the dwelling, variance relief is needed from the 50 foot setback to a property line. He also pointed out that if the addition were somehow placed in the front yard, even more variance relief would be necessary. The proposed location would have the least, if any, visual impact to neighbors. As to the proposed garage, again because of the unusual placement of the dwelling on the lot, it is impossible to place the garage in the rear yard because almost no rear yard exists. The side yard on the road side would not be beneficial because the structure would end up too close to the road. According to Mr. Martin, the proposed location would be the most appropriate. The height would respect the limitations for an accessory structure and would be fairly innocuous compared with similar structures in the neighborhood, as shown on the aerial photograph, Petitioner's Exhibit 6.

As to the variance request to exceed the 15% lot coverage limitation required by the R.C.5 Zone to 21%, Mr. Martin explained that this requirement, similar to the 50 foot property line setback requirement, is not realistic for properties so zoned in these waterfront areas. The lots themselves are normally rather small, usually only 50 feet wide with about a quarter to a third of an acre in area -- significantly smaller than the 1.5 acres required for a newly created lot in the R.C.5 Zone. He also indicated that the R.C.5 zoning on these waterfront properties is not consistent with the characteristics of areas generally found to be zoned R.C.5, including more rural areas that offer larger homes and much larger lots to accommodate those homes, as well as additional space for septic reserve areas and drainage fields. Moreover, sufficient room for

septic systems is not necessary in these waterfront areas with the addition of public sewer systems and grinder pumps. Indeed, even with a 15% lot coverage limitation on a newly created R.C.5 lot at least 1.5 acres in size, this allows lot coverage of approximately 9,800 square feet; however, for lots (especially waterfront lots) such as the subject property that are typically in the 0.25 acre range of size, this would allow total lot coverage of only 1,633 square feet. In Mr. Martin's expert opinion, such proportions are unrealistic even for just a new home, let alone additional accessory structures and other improvements. Finally, Mr. Martin stressed that the proposed improvements would pose no detriment to the public interest or the community.

In addition, Mr. Jablon conveyed a legal argument that he believes would take the proposed gazebo out of the calculation of lot coverage percentage under Section 1A04.3.B.3 of the B.C.Z.R. According to this section, "[n]o more than 15% of any lot in an R.C.5 Zone may be covered by buildings ...". Section 101 of the B.C.Z.R. defines "building" as "[a] structure enclosed within exterior walls or fire walls for the shelter, support or enclosure of persons, animals or property of any kind." However, Mr. Jablon asserts that a gazebo is not a "building;" rather, the dictionary definition of a gazebo is "a freestanding roofed structure usually open on the sides."¹ Since the gazebo is not a building and is not part of the calculation of lot coverage percentage, Mr. Jablon argues that the actual lot coverage would be less than 18% -- closer to the 15% permitted.

In further support of the variance requests, Ms. Treatt, the property owner, testified. She has lived at the subject property since 1999 and has made a number of improvements to the property, including a new concrete parking pad, a new above ground pool to replace a larger existing pool that was damaged by Hurricane Isabel in 2003, and a new pier. Ms. Treatt desires the subject improvements to enhance her property. The sunroom addition would allow more

¹ Merriam-Webster's Online Dictionary.

room in her home, especially for her mother who would predominantly reside there; the one car garage would allow for vehicle parking and storage of household items; the gazebo would be a place for family gatherings and allow use of the yard while providing protection from the sun. A brochure with a photograph of a proposed rectangular gazebo was submitted for illustrative purposes and marked and accepted into evidence as Petitioner's Exhibit 8.

Regarding one of the unique features of the property, Ms. Treatt indicated that her dwelling was previously a one-story structure used as a bar and store from the 1920's to the early 1940's. The structure then became a dwelling and rental property and ultimately became the two-story structure as it appears today in 1988-89. Mr. Martin had earlier indicated that this history likely explains the side front building face orientation of the dwelling on the property. Finally, Ms. Treatt indicated that she does not believe her proposed improvements would negatively impact her neighbors, particularly the next door neighbors Mr. and Mrs. Jacobs. The existing pool is only about 4 feet high and the decking is about 3½ feet. The proposed garage would only be one story and meet the height restrictions, and the proposed addition would also only be one story. In addition, the proposed gazebo would not restrict view to the water, since it would not have solid walls and would not exceed the 15 feet permitted for an accessory structure. A petition signed by 11 nearby neighbors in support of the improvements was marked and accepted into evidence as Petitioner's Exhibit 10. Photographs of Petitioner's property and the two adjacent properties were marked as Petitioner's Exhibits 11A through 11F.

Testifying in opposition to the requested relief was David Jacobs, the next door neighbor residing at 2606 Holly Beach Road. Mr. Jacobs indicated that he and his family have lived at their property for approximately 7 years. One of the reasons they moved there was for the attractive water views. Mr. Jacobs also acknowledged a strained relationship with Ms. Treatt

over the last few years, which culminated in Ms. Treatt opposing Mr. Jacobs' own variance request for an addition to his home. That case was heard by the undersigned this past year and although granted, is the subject of a now-pending appeal before the Baltimore County Board of Appeals.² Mr. Jacobs believes Ms. Treatt's current variance requests should be denied for several reasons. These include making improvements to her property (concrete driveway, pool, decking, and pier) without permits and inspections. He also references the undated Zoning Advisory Committee ("ZAC") comment pertaining to this case, where the Department of Environmental Protection and Resource Management ("DEPRM") cites concerns with the property's current lot coverage percentage of 33.8%, in excess of the 31.25% allowed on lots of this size in the Limited Development Area ("LDA"), and that the improvements would increase lot coverage to 48%. This DEPRM comment was marked and accepted into evidence as Protestant's Exhibit 1. Mr. Jacobs also introduced a booklet with photographs of his property and Petitioner's property, which was marked collectively as Protestant's Exhibit 2. The photographs show the Jacobs' current view from their property and how they believe that view would be obstructed by Petitioner's proposed garage and gazebo.

The ZAC comments were received and are made part of the record of this case. Comments were received from DEPRM dated January 22, 2010 which indicates that the property must comply with Chesapeake Bay Critical Area Regulations ("CBCA"). The property is located in the Limited Development Area ("LDA") and Buffer Management Area ("BMA") of the CBCA. The site plan does not appear to accurately show the shoreline and no street access to the proposed garage is shown. The property is currently at 33.8% lot coverage, based on the current site plan, 263 square feet over the maximum 31.25% allowed on lots of this size in the LDA. The proposed development would add 1,494 square feet of additional coverage for a total

² Case No. 2009-0279-A.

of 48%. These figures may change when the site plan is corrected. In addition, the proposed gazebo, patio, and deck extension would exceed accessory structure impact square footage allowed the buffer in the BMA.

Considering all the testimony and evidence presented, I am persuaded to grant the variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. The property is certainly unique based in part on the topography of the property as it slopes toward the water, but mostly due to the age of the dwelling and its layout and orientation that faces sideways, as well as the prior uses of the structure and its evolution into a two-story dwelling. I also agree with Mr. Martin's point concerning the impact of R.C.5 zoning on this property, which in my judgment renders the property unique in a zoning sense. Furthermore, I agree with Mr. Jablon's argument that the proposed gazebo should not be included in the calculation of lot coverage, since this structure does not meet the definition of a "building" contained in Section 101 of the B.C.Z.R. Hence, the calculation of lot coverage percentage without the gazebo and with the removal of an existing shed (as indicated by Petitioner) would result in a figure of 17.7%. Hence, I shall amend the requested relief "to permit 18% lot coverage in lieu of the permitted 15%."

I also find that practical difficulty and undue hardship would befall Petitioner if the requested variance relief were not granted. No matter what improvement would be planned, there is no possible way for Petitioner to comply with the R.C.5 distance to property line setback requirements. Denying the variance requests would also inhibit beneficial uses of the property that are otherwise permitted by the Regulations.

I further find that the requested variances can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public

health, safety and general welfare. It is important to note, however, that Petitioner must comply with the ZAC comments submitted by DEPRM, specifically as to lot coverage in the LDA and BMA of the Chesapeake Bay Critical Area.

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

THEREFORE, IT IS ORDERED this 31st day of January, 2010 by this Deputy Zoning Commissioner, that Petitioner's Variance requests as follows:

- From Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a 3 foot setback (rear) in lieu of the required 50 feet from any lot line; and
- From Section 1A04.3.B.2.b of the B.C.Z.R. to permit a 22 foot setback (front) in lieu of 50 feet from any lot line; and
- From Section 400.1 of the B.C.Z.R. to permit a garage in the front yard in lieu of the required rear yard; and
- From Section 1A04.3.B.3 of the B.C.Z.R. to permit 18% lot coverage in lieu of the permitted 15%,

be and are hereby **GRANTED**, subject to the following:

1. Petitioner is advised that she may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her 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. 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). The site plan does not appear to accurately show the shoreline and no street access to the proposed garage is shown. The property is located in the Limited Development Area (“LDA”) and Buffer Management Area (“BMA”) of the CBCA. The property is currently at 33.8% lot coverage, based on the current site plan, 263 square feet over the maximum 31.25% allowed on lots of this size in the LDA. The proposed development would add 1,494 square feet of additional coverage for a total of 48%. These figures may change when the site plan is corrected. In addition, the proposed gazebo, patio, and deck extension would exceed accessory structure impact square footage allowed the buffer in the BMA.

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