

IN RE: PETITION FOR VARIANCE

W side of Handy Avenue; 500 feet N of
the c/l of Rich Avenue
1st Election District
1st Councilmanic District
(1010 Handy Avenue)

David Nguyen
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **CASE NO. 2010-0257-A**

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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 owner of the subject property, David Nguyen. Petitioner is requesting Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed single-family dwelling on a lot with a width of 50 feet in lieu of the minimum required 55 feet. The subject property and requested relief are more fully depicted on the site plan which 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 David Nguyen and Scott Chilton, Petitioner’s building contractor and consultant who has worked with Petitioner on the development of the subject property. There were no Protestant’s or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is rectangular in shape and contains 7,500 square feet or 0.172 acre, more or less, zoned D.R. 5.5. The property is located in the Douglas Park Subdivision on the west side of Hand Avenue, north of Baltimore National Pike (U.S. 40) in the Catonsville area of the County. The subject property, known as Lot 137 in the original record plat marked and accepted into evidence as Petitioner’s Exhibit 3, is 50 feet wide and 150 feet deep, much like most of the other lots in the Douglas Park subdivision.

It is currently unimproved and only contains sporadic trees and brush as depicted by the photographs of the property marked and accepted into evidence as Exhibits 4A through 4D. Petitioner purchased the property in March 2010 according to the Real Property Data Search printout that was marked and accepted into evidence as Petitioner's Exhibit 6. At this juncture, Petitioner proposes to construct a pre-fabricated modular home of the type shown in the brochure that was marked and accepted into evidence as Petitioner's Exhibit 7. Architectural renderings and elevation drawings prepared by Chesapeake Bay Homes, which were marked and accepted into evidence as Petitioner's Exhibits 8A through 8C, show the two-story, single-family home almost identical to the one Petitioner proposes to construct on the subject property. These drawings show an aesthetically pleasing residence that will obviously be new in appearance, but will also mesh with the surrounding Douglas Park subdivision.

Petitioner requests variance relief due to the subject property having a lot width of 50 feet which is 5 feet less than the required 55 foot lot width for the D.R.5.5 Zone pursuant to Section 1B02.3.C.1 of the B.C.Z.R. Put simply, the current lot width renders the lot unfit for development absent variance relief. Mr. Chilton testified in support of the relief and indicated that a majority of the lots in the Douglas Park subdivision are only 50 feet wide and are clearly intended to be buildable, as shown on the record plat that was marked and accepted into evidence as Petitioner's Exhibit 3. The subdivision was recorded in April 1924, well prior to the adoption of the current zoning regulations which now require a lot width of 55 feet, thus in a sense rendering the subject property nonconforming. Petitioner's building of a single-family residence would be in-fill development as most of the subdivision has already been improved, save for a few other vacant lots. In-fill development is a preferred manner of development due to the fact

that water, sewer and other necessary utilities are already accounted for and thus impacts the land and the surrounding neighborhood minimally.

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 April 14, 2010 which indicate that Petitioner does not own sufficient adjoining land to conform to the minimum width and area requirements and therefore does not meet the standards stated in Section 304.1.C of the B.C.Z.R. Additionally, there appears to be several existing undersized lots in the neighborhood. As such, the Planning Office does not oppose the Petitioner's request. If the variance is granted, certain conditions should apply; namely, submitting building elevations for review and approval prior to the issuance of any building permit, and providing landscaping along the public road. The Department of Environmental Protection and Resource Management (DEPRM), the Fire Marshal's Office, and the State Highway Administration (SHA) submitted no negative comments in regard to the requested variance relief.

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 property is certainly unique given the age of the record plat that dates back to 1924 and the fact that the majority of the lots in the Douglas Park Subdivision have been developed with a width of 50 feet.

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 55 foot minimum lot width required in the D.R.5.5 Zone. Denying the variance request would also inhibit beneficial uses of the

property that are otherwise permitted by the Regulations for Petitioner or any other prospective purchaser of the subject property.

I further find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare. I also find that the variance request meets the requirements of Section 304.1 of the B.C.Z.R., in that the subject lot was duly recorded in a validly approved subdivision prior to March 30, 1955, that all other requirements of the height and area regulations are complied with, and that Petitioner does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

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 11th day of June, 2010 by this Deputy Zoning Commissioner, that Petitioner's Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a proposed single-family dwelling on a lot with a width of 50 feet in lieu of the minimum required 55 feet 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. Petitioner shall submit building elevations to the Office of Planning for review and approval prior to the issuance of any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color and architectural detail as that of the existing dwellings in the area.

3. Petitioner shall provide landscaping along the public road, if applicable.

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