

IN RE: PETITION FOR SPECIAL HEARING & *	BEFORE THE
VARIANCE - N/W Side Longview Drive,	ZONING COMMISSIONER
630' W c/line of Devere Avenue *	
(144 Longview Drive)	OF
1 st Election District *	
1 st Council District *	BALTIMORE COUNTY
Ferdinand D. Maisel, et ux	
Petitioners *	Case No. 2010-0262-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owners of the subject property, Ferdinand D. Maisel and his wife, Tanya Y. Hege-Maisel. The Petitioners request a special hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve the construction of a new dwelling on an existing lot of record and a confirmation that the overall density is not affected in the neighborhood. In addition, variance relief is requested pursuant to Sections 1B02.3A.5 and 1B02.3B of the B.C.Z.R., to permit the proposed dwelling on a lot with an area of 30,000 square feet and lot width of 100 feet in lieu of the required 40,000 square feet and 150 feet, respectively. The subject property and requested relief are more particularly described on the redlined site plan¹ submitted which was accepted into evidence and marked as Petitioners' Exhibit 2.

Appearing at the requisite public hearing in support of the requests were Ferdinand Maisel, property owner, Lee Giroux, a land use consultant with Permits Management, LLC, and Victoria Meyer, President of Maryland Building Permits, Inc., who are assisting the Petitioners through the permitting process. Also appearing was Karen A. Tamalavicz, a family friend, and Mitchell Horning, who observed the proceedings as part of his mission with the Boy Scouts of

¹ At the outset of the hearing, Petitioners amended the site plan to respond to the Zoning Advisory Committee (ZAC) comment received from Dennis Wertz, on behalf of the Office of Planning, dated April 12, 2010. The redlined amendments clarified that the front setback of the proposed dwelling will be positioned 135 feet back from the property line at the public street in line or equal to the front building line setback of the adjacent home at 146 Longview Drive.

America. There were no Protestants or other interested persons present, however, it is to be noted that three (3) letters of support were received from adjacent/surrounding property owners namely; Linda K. Lemmerman, (140 Longview Drive), Alisa Lewis (138 Longview Drive), and John Orndorff (107 Taunton Avenue). *See* Petitioners' Exhibit 6.

Testimony and evidence offered revealed that the subject property is a rectangularly shaped parcel containing approximately 30,000 square feet or .68 acres of land zoned D.R.1, located in the Stonewall Park subdivision of Catonsville. The property is on the north side of Longview Drive² and similar in size to other lots in Stonewall. Lot 65 designated on Maryland Tax Map No. 100 – Parcel 648 – Account No. 2400010012 is 100 feet wide at its frontage on Longview Drive and 300 feet deep as illustrated on the Plat of Stonewall and on the aerial photograph submitted to show the pattern of development – submitted as Petitioners' Exhibit 1. The property is unimproved and was purchased by Ferdinand Maisel in 1993. As is often the case with older subdivisions, the Plat of Stonewall Park was laid out many years ago (1921), well prior to the adoption of the zoning regulations in Baltimore County. Thus, as will be explained below, many of the lots in the neighborhood are undersized and do not meet the current area and width requirements. Ms. Giroux provided a history of the property, its use, Deed history and zoning changes. Pertinent to the petition before me is the fact that Lot 65 was purchased at the same time Mr. Maisel purchased his home on Lot 64. Lot 65, consisting of approximately three-quarters of an acre, was purchased with the assumption that Maisel would construct a house on it for his children, to rent or to sell. In any event, the two (2) lots were created by the subdivision of Stonewall Park – *See* Plat submitted as Petitioners' Exhibit 7. The minimum lot width of 100 feet and area deficiency has existed since 1992. During the Comprehensive Zoning Map Process (CZMP), at that time, the community had requested Baltimore County to downzone the D.R.2 classification on a large tract of land located between the originally established “Stonewall Park

² The zoning classification on the south side of Longview Drive is D.R.2. B.C.Z.R. Section 1B02.3C.1 (Chart) requires a lot area of 40,000 square feet and a lot width of 150 feet in the D.R.1 zone. The minimum lot area and width requirements in the D.R.2 zone are significantly decreased requiring a 20,000 square foot area and a 100 foot wide lot.

Subdivision” and Old Frederick Road. The purpose of the rezoning request was not to prohibit in-fill lot development in this subdivision – but to prohibit a developer from building multi-family townhouses on a large parcel of land located near Old Frederick Road. The County Council approved the community’s request and the zoning map was changed to D.R.1. The zoning map overlay, however, affected a large area of the existing properties in the subdivision – from the north side of Longview Drive to the east side of Old Frederick Road. It is notable that all County-provided utilities, water and sewer, were available to serve the subject property. This zoning reclassification in 1992 may have operated to stop the townhouse development but conferred the unintended consequence of rendering many of, if not all, the subdivision lots of record described in the Baltimore County Land Records in Plat Book 7, Folio 19, north of Longview Drive as undersized for building purposes due to either minimum lot area and/or lot width deficiencies.

The Petitioners submitted photographic evidence and plats (Exhibits 1 and 4) noting homes built prior to the zoning changes in 1992 were routinely built on 100-foot wide lots. The Petitioners’ exhibits disclosed that the pattern of development in the immediate neighborhood has taken place on undersized lots, which they say support their request. Moreover, the uncontradicted evidence clearly establishes that there has never been a desire to combine or merge the two (2) lots. There is no physical evidence that the subject property was used or consolidated with any other lot to invoke the doctrine of merger as described in *Friends of the Ridge v. Baltimore Gas & Electric Co.*, 352 Md. 645 (1999) and *Remes v. Montgomery County*, 387 Md. 52 (2005).

The Petitioners, believing they have a buildable lot, come before me seeking approval to develop the subject lot with a single-family dwelling. As shown on the site plan, the proposed structure will be setback 135 feet from the front property line and provide side yard setbacks of 25 feet, which is consistent with neighboring dwellings. Relief is requested because the lot is undersized. Under the D.R.1 zoning classification, a minimum lot area of 40,000 square feet is required and, as noted, the subject lot is only 100 feet wide and 30,000 square feet in area.

Testimony and evidence offered in support of the requests was that without variance relief, the lot could not be developed. Obviously, strict compliance with the regulations would create a hardship as the Zoning Regulations would result in a denial of a reasonable and sufficient use of the property. *See, Belvoire Farms v. North*, 355 Md. 259 (1999).

Suitable of mention here is the Baltimore County Zoning Commissioner's Policy Manual (ZCPM) which was enacted pursuant to Sections 3-7-203 through 3-7-208 and 32-3-105 of the Baltimore County Code. The ZCPM was last adopted and approved by the County Council in 1992. The Policy Manual contains policies and other information that assists the reader in interpreting the B.C.Z.R. On Page 3-3 thereof, the requirements of Section 304 of the B.C.Z.R. are discussed. Therein, it is indicated that the Zoning Commissioner has traditionally applied the "six-year rule" in considering adjacent property ownership. It is important to consider the intent of the owner of contiguous undersized lots that were purchased in good faith and without any intent to avoid the area requirements of Section 304.1.C. I am satisfied that the requirements set forth in Section 304 have been satisfied and that the construction of a dwelling on the subject undersized lot is appropriate and should be approved.

After due consideration of the testimony and evidence presented, I am persuaded that relief should be granted. To deny relief would result in a practical difficulty for the Petitioners in that there would be no reasonable use of the property for a permitted purpose, a purpose for which the neighboring properties have previously been used. The proposed development is in keeping with other homes in the neighborhood and meets the spirit and intent of Section 307 of the B.C.Z.R. and *Cromwell v. Ward* 102 Md. App. 691 (1995) for variance relief to be granted. I find that no increase in residential density beyond that otherwise allowable by the Zoning Regulations will result by granting this variance when looking at the overall neighborhood density. I find that the Maisel's, who own contiguous undersized lots, purchased the subject property in good faith and without any intent to avoid the area requirements. Moreover, as noted above, at the time of the Maisel's purchase of the property in 1993, it was being down zoned from D.R.2 to D.R.1. Finally, I find this variance can be granted in strict harmony with the spirit

and intent of the regulations, and in a manner as to grant relief without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property 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 1st day of June 2010 that the Petition for _____ Special Hearing, filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to confirm as part of my findings that the overall density of the surrounding neighborhood will not be affected, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 1B02.3A.5 and 1B02.3B of the B.C.Z.R. to permit a proposed dwelling on a lot with an area of 30,000 square feet and a lot width of 100 feet in lieu of the minimum required 40,000 square feet and 150 feet, respectively, in accordance with Petitioners' Exhibit 2, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the 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) The Petitioners, their successors or assigns, shall submit building elevation drawings to the Office of Planning for review and approval prior to the issuance of the building permit to ensure that the proposed house is compatible with existing homes in the area.

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

WJW:dlw

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County