

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/S Poplar Road, 48' E of Intersection with		
Lourdes Road	*	ZONING COMMISSIONER
(2010 Poplar Road)		
15 th Election District	*	OF
6 th Council District		
	*	BALTIMORE COUNTY
Robert Duley, et ux		
Petitioners	*	Case No. 2010-0250-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Robert Duley and his wife, Sandra Duley. The Petitioners request a variance from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit side yard setbacks of 22.5 feet (each side) in lieu of the required 50 feet for a replacement dwelling on existing lots of record.¹ The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Robert Duley, property owner, and David Billingsley, of Central Drafting and Design, Inc., the consultant who prepared the site plan and is assisting the Petitioners through the permitting process. There were no Protestants or other interested citizens in attendance.

Testimony and evidence offered revealed that the subject property is irregularly shaped and contains approximately 25,325 square feet or .581 acres of land zoned R.C.5. As shown on Petitioners' Exhibit 4, the property consists of two (2) adjacent lots numbered 65 and 66 in the Cedar Beach subdivision located in the Holly Neck area of Baltimore County. Specifically, the waterfront lots are located north of Holly Neck Road at the corner of Poplar Road and Lourdes

¹ At the outset of the public hearing, the Petitioner amended the request to read that the proposed dwelling is a "new replacement" dwelling rather than simply a new dwelling. Since this amendment had no effect on the requested relief, Petitioner was permitted to proceed at the hearing as scheduled.

Road. The property is currently improved with an existing (33' wide x 55' deep) one-story dwelling built in 1931, long before the latest iteration of the B.C.Z.R. The zoning map marked and accepted into evidence as Petitioners' Exhibit 8 reveals that the existing home is centrally located across the two (2) lots that comprise the subject property. As shown on Exhibits 2 and 3, the Duley's purchased the property on November 25, 2009 and are proposing to raze the existing structure and build a modest two-story dwelling (52' wide x 92'-3" including attached garage) in largely the same building footprint. The Duley's plan to retire and move from northern Baltimore County into the proposed replacement dwelling.

As previously stated, the property is part of the Cedar Beach subdivision, an older development that was recorded in the Land Records of Baltimore County well before the effective date of zoning regulations. As is often the case with older subdivisions, many of the lots do not meet current area and/or width requirements. In this regard, the subject property is approximately 100 feet wide and zoned R.C.5. Since the regulations now require a minimum area of 1.5 acres and 50-foot setbacks to any property line other than a street line, the subject lot(s) of record combined are clearly undersized by today's development standards. Indeed, this property, which has contained a dwelling for nearly 80 years, would not be considered developable if 50-foot side setbacks were strictly enforced on the 100-foot wide property.

Mr. Billingsley explained that the proposed replacement dwelling would be relatively long and narrow in shape and will be moved further from the water than the existing structure. Petitioner submitted the building elevations, which were marked and accepted into evidence as Exhibits 7A-D. As the elevations reveal, the two-story replacement dwelling will contain a one-story garage attached at the rear of the home facing Poplar Road. The replacement dwelling will have the same 22.5 foot side setback on the east side of the dwelling as the existing structure, and will reduce the side setback on the west side of the existing home from 43 to 22.5 feet.

Petitioner also submitted several photographs of the subject property, which were marked and accepted into evidence as Exhibits 5 and 6A-B. As the photographs reveal, the property currently contains a shed on the north side of the existing structure (closer to the water), and a

pool located on the south side of the structure (closer to Poplar Road). The Duley's plan to clean up the property by removing both the shed and the pool and constructing a modest, updated dwelling.

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 23, 2010, which state that the Department reviewed the Petitioners request and accompanying site plan and elevation drawing and finds the proposal to be in accordance with the spirit and intent of the R.C.5 zoning regulations and performance standards listed within Section 1A04.3 of the B.C.Z.R. As such, this office does not oppose the requested variance. Comments were also received from the Department of Environmental Protection and Resource Management (DEPRM), dated May 10, 2010, which state that 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 property is within a Limited Development Area (LDA) and Buffer Management Area (BMA) of the Chesapeake Bay Critical Area. Lot coverage is limited to 15% without mitigation, but may go up to 5,445 square feet, if approved and with mitigation, for the amount over 15%. A minimum of eight (8) trees is required on site at all times to meet the 15% forest requirement. All BMA requirements must be met.

After careful consideration of the testimony and evidence presented, I am persuaded to grant the relief requested. I find that the Petitioners have met the requirements of Section 307 of the B.C.Z.R. as interpreted in *Cromwell v. Ward*, 102 Md. App. 691 (1995). As noted above, the subject property has been a lot of record for many years, well prior to the adoption of the R.C.5 zoning regulations in 1979, and has contained a dwelling for nearly 80 years. Given the shape and size of the lot, and its location in a subdivision recorded many years prior to the adoption of any zoning regulations in Baltimore County, I find it unique in a zoning sense.

I further find that strict compliance with the regulations would result in practical difficulty or unreasonable hardship for the Petitioners as enforcement of 50 foot side setbacks on a 100 foot wide property would cause this lot to be undevelopable. As the zoning map submitted

as Petitioners' Exhibit 8 reveals, many similarly sized lots contain homes in the area surrounding the subject property. Additionally, the subject property has contained a dwelling for nearly 80 years, and it would be unreasonable to now strictly enforce the side setback requirements on this undersized lot, which would make the property unbuildable.

There were no adverse comments submitted by any County reviewing agency, and in fact the Office of Planning has already reviewed and approved the building elevations and found the proposal to be consistent with the R.C.5 zone and regulations. Additionally, there was no objection from the adjacent property owners who support the proposal. Accordingly, I find that relief can be granted without detrimental impact to the health, safety, or general welfare of the surrounding locale. As demonstrated on the site plan, the Petitioners will be removing an existing pool and shed and building a modest and updated home that will be served by public water and sewer. The improvements will be compatible with the area and the appearance of the property impacting the surrounding locale in a positive rather than negative manner. As the Office of Planning stated, the proposed replacement dwelling is consistent with the performance regulations, and I find that the proposal will permit the Duley's to build a modest home without having any negative effect on the surrounding community.

Pursuant to the advertisement, posting of the property and public hearing on this Petition 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 18th day of May 2010 that the Petition for Variance seeking relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit side yard setbacks of 22.5 feet and 22.5 feet in lieu of the required 50 feet for a new dwelling on combined existing lots of record, in accordance with Petitioners' Exhibit 1, 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) Compliance with Chesapeake Bay Critical Area regulations and all other appropriate environmental, floodplain and B.O.C.A. regulations relative to the protection of water quality, streams, wetlands, and floodplains. See attached ZAC comments from the Department of Environmental Protection and Resource Management (DEPRM), dated May 10, 2010, and the Bureau of Development Plans Review (DPR), dated April 8, 2010.

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