

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W side of Galloway Road, 765 feet from		
the c/l of Cold Spring Road	*	DEPUTY ZONING
Election District		
Councilmanic District	*	COMMISSIONER
(3528 Galloway Road)		
	*	FOR BALTIMORE COUNTY
Albert Cloutier, Jr.		
<i>Legal Owner</i>	*	
James and Patricia Rosner		
<i>Contract Purchaser</i>	*	CASE NO. 2010-0044-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 Albert Cloutier, Jr., personal representative, on behalf of the legal owner of the subject property, the Estate of Albert Cloutier, Sr., and the contract purchasers, James and Patricia Rosner. 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 allow side setbacks of 10 feet and 10 feet and a 59 foot setback from the center of a street or road in lieu of the required 50 feet, 50 feet and 75 feet respectively for a new dwelling; and
- From Section 1A04.3.B.3 of the B.C.Z.R. to allow a building coverage of 23.5% in lieu of the permitted 15%; and
- From Section 1A04.3.A of the B.C.Z.R. to allow a building height of 42 feet in lieu of the permitted 35 feet; and
- From Section 301.1.A of the B.C.Z.R. to allow a side yard of 6 feet in lieu of the required 37.5 feet for an open stairway and porch.¹

¹ Petitioners' consultant, Mr. Billingsley, requested to amend this variance request. He indicated that, logistically, a 4 foot wide open stairway and porch (with a 6 foot side yard setback) would not be practical and requested an amendment to reflect that the open stairway and porch would be 7 feet wide in order to accommodate a split level stairway leading to the second level front door and porch area. This would necessitate a side yard setback of 3 feet in lieu of the required 37.5 feet. The undersigned views this as a minor amendment and, with no opposition to the request, granted the amendment. A revised redlined site plan reflecting the amendment was marked and accepted into evidence as Petitioner's Exhibit 1A.

The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1. A revised site plan was also marked and accepted into evidence as Petitioners' Exhibit 1A.

Appearing at the requisite public hearing in support of the variance requests was Petitioner James Rosner. Also attending was David Billingsley with Central Drafting & Design, Inc., the land use and zoning professional assisting Petitioners in the zoning process. There were no Protestants or other interested citizens in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is rectangular in shape and contains approximately 8,575 square feet or 0.197 acre, more or less, zoned R.C.5. The property is located on the west side of Galloway Road, south of Bowleys Quarters Road, with a water view of Galloway Creek, in the Bowley's Quarters area of the County. The property is presently improved with an existing one-story dwelling, as well as a shed located on the water side of the property. The property has access to public water and sewer services.

As shown on the SDAT real property data search printout that was marked and accepted into evidence as Petitioner's Exhibit 2, the dwelling was constructed in 1958, but according to Mr. Billingsley, likely had a "shore shack" at that location previously. The property also has an existing pier extending from the shoreline. Mr. Billingsley also discussed the ownership history of the property. According to the Deed that was marked and accepted into evidence as Petitioners' Exhibit 3, Albert Cloutier, Sr. and his wife Delores Cloutier acquired the property in 1964. After Mr. Cloutier died, his son, Albert Cloutier, Jr., became personal representative of his estate on June 30, 2008, as evidenced by the State of Maryland Letter of Administration dated June 30, 2008 that was marked and accepted into evidence as Petitioners' Exhibit 4. Mr. Billingsley also referenced the record plat that was marked and accepted into evidence as

Petitioners' Exhibit 5 and depicts the Bowleys Quarters subdivision as platted and recorded on May 27, 1921.

At this juncture, Petitioners James and Patricia Rosner, desire to acquire the property and raze the existing structures and construct a replacement dwelling on the property on substantially the same footprint as the existing dwelling. In order to do so, Petitioners are in need of variance relief from the side yard and centerline to street setbacks for the dwelling, from the building coverage limitation of 15%, from the maximum permitted height of 35 feet, and from the side yard setback for an open stairway and porch.

In support of the variance requests, Mr. Billingsley indicated that the zoning relief is driven primarily by the fact that the subject lot was laid out many years ago, well prior to the adoption of any Zoning Regulations in Baltimore County. In attempting to improve the property with a newer, more up to date dwelling, Petitioners are unable to meet most of the setback, square footage, and height requirements. This is further compounded by the current R.C.5 zoning on the property which makes it even more difficult to meet those requirements. In addition, as to the building coverage issue, Mr. Billingsley pointed out that the property currently has about 25% building coverage on the lot. Petitioners desire to build substantially on the same footprint, but as a result, would still exceed the 15% limitation required in the R.C.5 Zone. In fact, Petitioners propose approximately 23.5% building coverage. Mr. Billingsley argued that this 15% requirement is important in the traditional R.C.5 areas, where newly created lots must be at least 1.5 acres and many are much larger than that. The 15% building coverage on a minimum 1.5 acre lot (65,340 square feet) would allow a building coverage of almost 10,000 square feet. In the instant matter, the proposed replacement dwelling would only be approximately 2,010 square feet.

Finally, Mr. Billingsley indicated that other homes that have been built in the community as replacement dwellings are on similarly small or narrow lots in the R.C.5 Zone, and demonstrate a pattern of development that is consistent with the neighborhood, often with setbacks of less than 10 feet, building coverage in excess of 15%, and heights above 35 feet. Photographs of the subject property and nearby properties were marked and accepted into evidence as Petitioners' Exhibits 7A through 7D. It is also noteworthy that the height variance is driven by the need for the new home to be elevated in order to comply with the base flood and flood protection elevations.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Bureau of Development Plans Review dated August 19, 2009. The comments indicate that the first floor or basement must be at least one foot above the flood plain elevation in all construction, the building should be designed and adequately anchored to prevent flotation or collapse and constructed of materials resistant to flood damage. Flood-resistant construction should be in accordance with the Baltimore County Building Code which adopts the International Building Code. Comments were received from the Department of Environmental Protection and Resource Management dated September 21, 2009 which indicates that development of the property must comply with the Chesapeake Bay Critical Area Regulations. The lot is within a Limited Development Area (LDA) and a Buffer Management Area (BMA) of the Chesapeake Bay Critical Area. Lot coverage is limited to 31.25% with mitigation required for lot coverage above 25% and the 15% afforestation requirement must be met. In addition, the BMA requirements for development within the 100 foot buffer must be met. Comments were received from the Office of Planning dated September 21, 2009 which indicates that it does not oppose Petitioners' request, provided the construction complies with the current R.C.5 requirements. In order to make this determination, the Office of

Planning will require the submission of additional information, which will be expounded on further in this Order.

This case, as with other properties in the area that are zoned R.C.5, presents an increasingly common set of circumstances before this Commission; namely, waterfront properties in eastern Baltimore County that are zoned R.C.5, but were platted and recorded decades ago -- certainly prior to the adoption of Zoning Regulations in these areas -- and thus do not meet the current zoning requirements for setbacks and building coverage. In addition, because these areas are within the floodplain, the base flood and flood protection elevations also make it increasingly difficult for property owners to replace aged, often dilapidated original structures that were relatively small and intended as summer cottages with new homes of sufficient size that are often used as a primary residences, yet still not exceed the maximum allowable height of 35 feet.

Thus, the task for this Commission is to review the purpose of the R.C.5 Zone and interpret that in the context of these waterfront properties. Section 1A04.1.B states that the R.C.5 zoning classification is established in order to: (1) provide for rural-residential development in suitable areas in which basic services are not anticipated, (2) eliminate scattered and generally disorderly patterns of future rural-residential development, (3) assure that encroachments onto productive or critical natural resource areas will be minimized, and (4) provide a minimum lot size which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems.

Turning now to the instant matter, I am persuaded to grant the requested relief. Although the subject property does not meet the height and front and side yard setback limitations, in my view, this lot -- and others like it -- is clearly consistent with the purpose of the R.C.5 zoning classification, and therefore meets the spirit and intent of the Zoning Regulations. As to the

concern over the provision of basic services and adequate area for on-site sewer and water systems, in this case the property does have access to existing public water and sewer services. As to the issue of scattered and generally disorderly patterns of future rural-residential development, that is also not impacted here. This property is a lot of record and has been in existence for almost 90 years. As depicted in the record plat accepted into evidence as Petitioners' Exhibit 5, it was platted and recorded as part of a planned layout of waterfront properties in Bowleys Quarters. Regarding the encroachments onto productive or critical natural resource areas, this property is situated in the Chesapeake Bay Critical Area and is subject to stringent regulations at the State and local level, including afforestation and mitigation in environmentally sensitive areas. DEPRM's careful watch over these issues will minimize the potential impact of this development in those areas. In addition, it is noteworthy that the existing home currently has a building coverage of 25%; however, with the proposed new dwelling, lot coverage will actually be reduced to 23.5%.

I also find the property unique in a zoning sense in that the setback and height constraints cause the subject property to be disproportionately impacted by the Zoning Regulations as compared with other surrounding properties, making it virtually impossible for Petitioner to have any dwelling erected on the property. The property is only 50 feet wide and the setback for each side is 50 feet. Moreover, the base flood and flood protection elevation requirements almost automatically dictate that a proposed dwelling will begin with a 10 or 11 foot height above ground level, leaving perhaps only 25 feet for the enclosed living areas of the dwelling height, including an adequate roof pitch.

Finally, I find that the variance requests 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.

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

THEREFORE, IT IS ORDERED this 9th day of November, 2009 by this Deputy Zoning Commissioner, that Petitioners' request for Variance relief as follows:

- From Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow side setbacks of 10 feet and 10 feet and a 59 foot setback from the center of a street or road in lieu of the required 50 feet, 50 feet and 75 feet respectively for a new dwelling; and
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be and are hereby **GRANTED**. The relief granted herein shall be subject to the following:

1. Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The base flood elevation for this site is 10.2 feet Baltimore County Datum. The flood protection elevation for this site is 11.2 feet. In conformance with Federal Flood Insurance Requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.
3. The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.
4. The building engineer shall require a permit for this project. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage. Flood-resistant construction shall be

5. 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).
6. The lot is within a Limited Development Area (LDA) and a Buffer Management Area (BMA) of the Chesapeake Bay Critical Area. Lot coverage is limited to 31.25% with mitigation required for lot coverage above 25% and the 15% afforestation requirement must be met. In addition, the BMA requirements for development within the 100 foot buffer must be met.
7. Prior to obtaining a building permit, Petitioners shall submit the following information to the Office of Planning for their determination that the proposed structure meets the R.C.5 Performance Standards.
 - a. Submit photographs of existing adjacent dwellings to the Office of Planning.
 - b. Submit building elevations (all sides) of the proposed dwelling to the Office of Planning for review and approval. The proposed dwelling shall be compatible in size and architectural detail as that of the existing dwellings in the area. Ensure that the exterior of the proposed building(s) use the same finish materials and architectural details on the front, side and rear elevations. Use of quality material such as brick, stone or cedar is encouraged.
 - c. Design all decks, balconies, windows, dormers, chimneys and porches as a component of the building following dominant building lines. Decks shall be screened to minimize visibility from a public street.
 - d. Design all accessory structures at a scale appropriate to the dwelling and design garages with the same architectural theme as the principal building, on the site, providing consistency in materials, colors, roof pitch and style.
 - e. Provide landscaping along the public road, if consistent with the existing streetscape.

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