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| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| SE/Side Barrison Point Road, 3,200 NE of | * | ZONING COMMISSIONER |
| Barrison Point Court | | |
| (2427-2429 Barrison Point Road) | * | OF |
| 15 th Election District | * | BALTIMORE COUNTY |
| 6 th Council District | | |
| | * | |
| Paul Bonneville, et ux, <i>Legal Owners</i> | | |
| The Rev. John K. Burk, et ux, | * | |
| <i>Contract Purchasers</i> | | Case No. 2010-0337-SPHA |
| | * | |
| Petitioners | | |

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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 legal owners of the subject property, Marjorie M. Bonneville, and her husband, Paul Bonneville, and the contract purchasers, John K. Burk, and his wife, Deborah R. Burk, by and through their attorney, Edward C. Covahey, Jr., Esquire. The Petitioners are requesting a special hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve the construction of a new dwelling on existing lots of record, a confirmation that density is not affected and that the Amusement Park use granted in Case No. 1953-2583-X has been abandoned. The variances requested are filed pursuant to B.C.Z.R. Section 1A04.3.B.2.b to: (1) permit a setback of 30 feet from the centerline of a street or road in lieu of the required 100 feet from a street that leads to a collector road, (2) allow a side property line (north side) setback of 40 feet in lieu of the required 50 feet, and (3) to allow a side property line (south side) setback of 23 feet in lieu of the required 50 feet. 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 1.

Appearing at the requisite public hearing in support of the requests were Paul and Marjorie Bonneville, property owners, John and Deborah Burk, contract purchasers, Brian Dietz of Dietz Surveying Company, the consultant who prepared the site plan and is assisting the Petitioners in the permitting process, and Edward C. Covahey, Jr., Esquire of Covahey, Boozer, Devan & Dore, P.A. Joseph and Carol Blanchard, who reside on Barrison Point Road and are familiar with the properties history, appeared in support as did the Long & Foster's real estate agents representing the parties; namely, Addy M. Watson (seller's agent), and Joan A. Biuk (listing agent). There were no Protestants.

Testimony and evidence offered revealed that the property is an irregular rectangularly shaped parcel located on the southeast side of Barrison Point Road some 3,500 feet northeast of Rocky Point Road in eastern Baltimore County. The property is unimproved and identified on the Maryland Department of Assessments Tax Map 105 as Parcels 271 and 272 and when combined contain an area of 0.666 acres, more or less, and zoned R.C.5. As illustrated on the site plan (Exhibit 1), the property is a water-oriented lot with 143 feet of frontage along Barrison Point Road, 254 feet deep, and has 130 feet of access to the waters of Hawk Cove at the stone bulkhead. In this regard, Mr. Dietz indicated that the shoreline had sustained substantial erosion over time and most notably during Hurricane Isabel in 2003. He used the old bulkhead wood posts shown on the site plan and the meets and bound descriptions contained in the Deed

¹ Petitioners amended their site plan at the onset of the hearing, without objection, to respond to the Zoning Advisory Committee (ZAC) comment received from Laurie Hay, who appeared at the hearing on behalf of the Office of Planning. See Office of Planning's comment, dated June 17, 2010, regarding the R.C.5 Performance Standards set forth in B.C.Z.R. Section 1A04.4. The plan was amended by Brian Dietz of Dietz Surveying Company to show the front orientation of the proposed two-story dwelling facing Barrison Point Road. Ms. Hay reviewed the elevation drawings and floor plan (Petitioners' Exhibit 3), photographs of adjacent existing dwellings (2535 & 2423 Barrison Point Road – Petitioners' Exhibits 4 & 5 respectively) and approved the design of the home.

(Petitioners' Exhibit 2) to demonstrate a loss of 100 feet of shoreline on the north side of the property and 40 feet on the south side. Mrs. Bonneville made it known to the undersigned that she and her husband have paid taxes for many years on the entire lot areas even though it was decreased and worn away by erosion.

The Bonneville's now wish to sell their property to the Burks who wish to construct a 39' x 64' dwelling on the property. In order to proceed with the construction of a home, the setback variance from the centerline of the road and side property lines is necessary, given that the property is now zoned R.C.5. It should be noted that this community was developed and designed at a time when houses could easily be constructed on these lots without the need for a variance. However, the subject community has been rezoned to R.C.5, which necessitates the variance request. The home would be centrally located on the lots. The special hearing by implication should also approve the density and confirm the overall density of the neighborhood is not affected.

Mr. Covahey indicated the lots have the potential to have access to public water and sewer via grinder pump. He further points out that the R.C.5 zoning classification was placed on the properties when utility services were non-existent and now that they have been provided, the zoning classification should rightly be changed to D.R.5.5. Further, he indicated that, as combined, this is one of the larger lots in the community where many of the existing homes were built on 50-foot wide lots. He points to the Barrison Point subdivision just south of the subject property that was laid out many years ago (1926), well prior to the adoption of the zoning regulations in Baltimore County. Thus, all of the lots in the neighborhood are undersized and do not meet current area and width requirements. Thus, he submits that the relief requested is appropriate and consistent with the waterfront community. The new home on the proposed lots would have less density than others in the neighborhood built on 50-foot wide lots and many

within 20 feet of the roadway. He supplied photographs of houses in the neighborhood showing that the new home would be compatible with the pattern of development. *See* Exhibits 4 and 5.

The current R.C.5 zoning regulations require a minimum lot area of 1.5 acres. Thus, it is clear that the subject lot is undersized by today's standards. However, County Council Bill No. 152-2004 provides for an exception to the "lot area – density control". That Section – 1A04.3.B.1.b(1) – provides an exception as follows:

“(1) The owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003, but does not meet the minimum acreage requirement ... may apply for a special hearing under Article 5 [500.7] to alter the minimum lot size requirement ...”.

Thus, Petitioners request special hearing relief to identify the subject property as a buildable lot despite non-conformity with the current Regulations.

A brief history of the subject property is necessary for background purposes. According to testimony received from Joe Blanchard and Mrs. Bonneville (whose father, Melvin Blanchard, initially owned the property), the subject property have been lots of record since at least August 18, 1972 as indicated on the Deed submitted as Petitioners' Exhibit 2 and recorded among the Land Records of Baltimore County in Liber 5292, Folio 949. Parcels 271 and 272, although next to the Barrison Point subdivision, are not part of that subdivision. As shown on the site plan attached to the "Petition for Special Permit" and "Order" in zoning Case No. 1953-2583-X (Petitioners' Exhibit 6), then Zoning Commissioner Charles H. Doing determined the property was part of a 2.25 acre parcel approved to be used for an Amusement Park. Mrs. Bonneville stated that prior to her father's purchase of the property, it was used as a park and picnic area. According to her, there were never any "rides" or "amusement devices" – only a forested picnic area where people would come for relaxation, swimming and an escape from the

busy City. In any event, that use was abandoned many decades ago prior to Melvin F. Blanchard and his wife's division of the property for the benefit of their children in 1969.

Next, Reverend Burk and his wife Deborah indicated they are anxious to develop the property with a one-story traditional brick home that will feature 1,800 square feet of living area and a two-car garage. Their elevation drawings were submitted as Petitioners' Exhibit 3 illustrating this detail. Reverend Burk is a member of the Chesapeake Bay Association and the Chesapeake Heritage Association and spoke of his great love of the County's water resources and his involvement with the Maryland Coastal Bays Program in limiting storm water "runoff" into the bay from farms and promoting the health of the bay.

Due to the past erosion that has created an "inlet" in the properties Critical Area Easement area, the Department of Environmental Protection and Resource Management (DEPRM) is rather assertive that the dwelling be moved away from the water and as close to Barrison Point Road which generates Petitioners request for a setback as close as 30 feet from the centerline of the road. In support of this request, it was indicated that even with variance relief the proposed dwelling would be consistent with other homes in the community and feature similar setbacks as many of the other new replacement homes that have been built on Barrison Point Road.

As indicated above, Ms. Laurie Hay appeared on behalf of the Office of Planning and approved the building elevations. While the Zoning Commissioner's Policy Manual (ZCPM), Sections 400.1A and 400.2A, provides assistance in a determination of what constitutes the front yard on waterfront lots based on the orientation of the house and accessory buildings, it was determined in this case that the front yard would face upon Barrison Point Road. Ms. Hays concurred and expressed a desire to have the elevation drawings (Exhibit 3) labeled to show the dwellings front façade and covered porch facing the public right-of-way. In most cases,

waterfront lots refer to the front of the structure as facing the water. In this case, the front of the home will face Barrison Point Road and the rear will face the water.

After due consideration of the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land which is the subject of the variance request. These lots were created many years before the R.C.5 regulations were imposed and as such, are impacted differently from lots in the area created after the resource conservation regulations began. I also find strict compliance with the County's Zoning Regulations would result in practical difficulty or unreasonable hardship. There is no land available to increase the area of the subject two (2) lots. Given the need to meet the Critical Area law, the new home cannot practically meet the 100-foot centerline setback requirement or with a combined lot width of 127 feet – a suitable home compatible to the area – could not be built given the minimum required 50-foot side yard setbacks. I find that no increase in residential density beyond that otherwise allowable by the Zoning Regulations will result by granting these variances when looking at the overall neighborhood density including the Barrison Point subdivision area to the north. Finally, I find that these variances can be granted in strict harmony with the spirit and intent of the regulations, and in such a manner as to grant relief without injury to the public, health, safety and general welfare. There are at least ten (10) other variance cases in the area in which homes have been permitted on undersized lots.² Many are built on 50-foot wide lots. This new home will be built on a 127-foot wide lot at the front building line. This will not adversely affect the pattern of development in this neighborhood. However, due to the properties close proximity to Hawks Cove, the proposed improvements must comply with Chesapeake Bay Critical Area (CBCA) regulations as set forth in the

² Records maintained by this Commission disclosed zoning relief granted for lots on Island View Road adjacent to Browns Creek as follows: Case Nos. 1994-0015, 2002-0472, 2002-0962, 2004-0259, 2005-0690, 2006-0062, 2008-0303, 2008-0596, 2010-0123 and 2010-0145.

Department of Environmental Protection and Resource Management's (DEPRM) Zoning Advisory Committee (ZAC) comment. I find that the Petitioners have met the requirements of Section 307 and *Cromwell v. Ward*, 102 Md. App. 691 (1995) for relief to be granted.

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 September 2010 that the Petition for Special Hearing filed, pursuant to Sections 500.7 and 1A04.3.B.1.b(1) of the Baltimore County Zoning Regulations (B.C.Z.R.) to allow a lot area of 0.666 acres in lieu of the required 1.5 acres (Parcels 271 and 272 are to be combined into one lot) for a proposed single-family dwelling, a confirmation that density will not be affected, and that the Amusement Park use granted in Case No. 1953-2583-X has been abandoned, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 1A04.3.B.2.b of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows: **(1)** to permit a front yard setback of 30 feet from the centerline of a street or road in lieu of the required 100 feet for a new dwelling, and **(2)** to permit side yard setbacks from any lot line other than a street line of 40 feet (north side) and 23 feet (south side) in lieu of the required 50 feet, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1. The Petitioner 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 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 the Zoning Advisory Committee (ZAC) comment submitted by the Department of Environmental Protection and Resource Management (DEPRM) relative to the Chesapeake Bay Critical Area (CBCA) regulations and all other appropriate environmental regulations relative to the Limited

Development Area of the CBCA that will require a Critical Area Variance. A copy of the comment, dated June 28, 2010, has been attached hereto and are made a part hereof.

3. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

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