

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
NE side of Chestnut Road; 554 feet E		
of the c/l of Seneca Road	*	DEPUTY ZONING
15 th Election District		
6 th Councilmanic District	*	COMMISSIONER
(4026 Chestnut Road)		
	*	FOR BALTIMORE COUNTY
Michael and Kristen Loveless		
<i>Petitioners</i>	*	CASE NO. 2011-0132-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by the legal property owners, Michael and Kristen Loveless. Petitioners request Special Hearing relief pursuant to Sections 1A04.3.B.1.b(1), 1A04.3.B.2.b and 1A04.3.B.3 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed replacement single-family dwelling on a lot of 26,647 square feet in lieu of the required 1.5 acres with side setbacks of 10 feet in lieu of the required 50 feet, and a lot coverage of 23% in lieu of the maximum allowed 15%. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief were Petitioners Michael and Kristen Loveless. Also appearing was Vincent Moskunus with Site Rite Surveying, Inc., the firm that prepared the site plan for the Petitioners, and Tom Ridley, the builder assisting the Petitioners.

Testimony and evidence presented revealed that the subject property is an irregularly shaped parcel consisting of 0.612 acres or approximately 26,647 feet of land zoned R.C.5. The property is located on the north side of Chestnut Road adjacent to Seneca Creek and is recorded as Lots 136-137 of the Bowleys Quarters subdivision. Petitioners submitted the Record Plat for

Bowleys Quarters, demonstrating that the lots comprising the subject property were recorded in 1921, well before 2003 as required by Section 1A04.3.B.1.b(1) of the B.C.Z.R.

Further testimony revealed that Petitioners purchased the property in September 2010 and are proposing to raze the existing dwelling and to build a replacement dwelling on the property. The replacement dwelling will be an attractive two-story home with a wooden deck facing the creek and a porch and garage facing Chestnut Road. Petitioners submitted a copy of the proposed floor plan, which was marked and accepted into evidence as Petitioners' Exhibit 6. The proposed dwelling will be located further from the Creek than the existing dwelling, which will decrease the environmental impact on the property by reducing the improvements in the critical area buffer; however, due to the shape of the property (which is wider at the water and narrows towards Chestnut Road), the location of the replacement dwelling requires relief from the side setback requirements for property in the R.C.5 Zone.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated October 28, 2010 stating that the Office does not oppose the petitioner's request, with the requirement that the development comply with R.C.5 performance standards. 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. Comments were also received from the Department of Environmental Protection and Resource Management (DEPRM) dated November 8, 2010 stating that the lot is located within a Limited Development Area (LDA) and Buffer Management Area (BMA) of the Chesapeake Bay Critical Area (CBCA). The proposed dwelling will be farther from the water than the existing dwelling. The CBCA lot coverage limit of 5,445 square feet, reduction of lot coverage in the 100-foot buffer, and the BMA requirements will minimize adverse impacts on

water quality that result from development activities. The proposed development must comply with all LDA and BMA requirements, including the 15% Afforestation requirement and CBCA lot coverage requirements, prior to building permit approval. Therefore, the subject zoning petition will conserve fish, wildlife and plant habitat. The proposed development will be consistent with established land use policies for development in the Chesapeake Bay Critical Area, which accommodate growth and also address the fact that even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts. Additional comments were received from the Bureau of Development Plans Review, dated October 21, 2010, which indicates 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.

Considering all of the evidence and testimony presented at the hearing, I am persuaded to grant the Petition for special hearing and permit the construction of the proposed replacement dwelling. The relief requested in this special hearing petition (from side setbacks and lot coverage percentages) is the type of relief that would typically be requested in a petition for variance. However, Section 1A04.3.B.1.b(1) of the B.C.Z.R. specifies that the owner of a lot of record that existed prior to September 2, 3003 can apply for a special hearing to improve properties that do not meet the minimum acreage or setback requirements for R.C.5 zoned properties. That is precisely the case here, where Petitioners are requesting approval to build a structure on an R.C.5 lot that was recorded in 1921, substantially prior to 2003. All of the lots surrounding the property are undersized, and the property has contained a single-family dwelling for years without incident.

I therefore find no reason to deny Petitioners desire to alter the minimum lot size requirement pursuant to Section 1A04.3.B.1.b(1) of the B.C.Z.R. Additionally, the replacement dwelling will reduce the existing environmental impact by moving the structure farther from Seneca Creek, thereby promoting the important public purposes of the Critical Area law. As previously mentioned, the decision to move the new dwelling farther from the water places an increased impact on the side setbacks due to the shape of the property, and I am persuaded to grant zoning relief from the setback requirements in order to facilitate the resulting environmental benefit. All in all, Petitioners are proposing an attractive dwelling that will further the purposes of the Critical Area law without having any negative impact on the surrounding area or the side yards in particular.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioners' request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 10th day of December, 2010 that Petitioners' request for Special Hearing relief pursuant to Sections 1A04.3.B.1.b(1), 1A043.B.2.b and 1A04.3.B.3 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a proposed replacement single-family dwelling on a lot of 26,647 square feet in lieu of the required 1.5 acres with side setbacks of 10 feet in lieu of the required 50 feet, and a lot coverage of 23% in lieu of the maximum allowed 15%, be and is hereby **GRANTED** subject to the following conditions:

1. Petitioners may apply for permits 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 8.5 feet [NAVD 88].
3. The flood protection elevation for this site is 9.5 feet.
4. 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.
5. 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.
6. The building engineer shall require a permit for this project.
7. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
8. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.
9. The proposed development must comply with all Limited Development Area (LDA) and Buffer Management Area (BMA) requirements, including the 15% afforestation requirement and Chesapeake Bay Critical Area lot coverage requirements, prior to building permit approval.
10. Prior to obtaining a building permit, the Petitioner shall submit the following information to the Office of Planning for their determination that the proposed structure meets the RC 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 it is 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