

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N side of Fourth Avenue; 157 feet E	*	DEPUTY ZONING
of the c/l of Hammonds Ferry Road	*	COMMISSIONER
13 th Election District	*	FOR BALTIMORE COUNTY
1 st Councilmanic District	*	
(3 Fourth Avenue)	*	
Paul and Shirlee Reinke	*	CASE NO. 2011-0059-A
<i>Petitioners</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Paul R. Reinke Jr. and Shirlee J. Reinke. Petitioners are requesting Variance relief from Sections 1B02.3.C.1 and 304 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a lot width of 50 feet in lieu of the required 55 feet, and to approve an undersized lot containing 5,000 square feet in lieu of the required 6,000 square feet. 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 variance request was Bernadette Moskunas with Site Rite Surveying, Inc., the firm that prepared the site plan. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is rectangular in shape and contains 5,000 square feet or 0.114 acre, more or less. As shown on the zoning map that was marked and accepted into evidence as Petitioners’ Exhibit 4, the property is located at the convergence of several zoning classifications, including predominantly B.L., a small area of R.O. to the rear of the property, and what appears to be a very small sliver of D.R.5.5 running down the eastern side of the property from Fourth Avenue toward the rear of the property. The property

consists of two 25 foot wide by 100 foot deep lots as part of the “Lansdowne” subdivision and is currently unimproved. Ms. Moskunas submitted a record plat, which was marked and accepted into evidence as Petitioners’ Exhibit 2, indicating that the property was platted as part of the subdivision that was recorded in 1889. The property has been held intact by the current owners since 2000. At this juncture, Petitioners propose to construct a two-story single-family dwelling on the property.

Ms. Moskunas indicated that Petitioners are in need of variance relief due to the subject property having a lot width of 50 feet which is 5 feet less than the required 55 foot lot width for the D.R.5.5 Zone, and an area of 5,000 square feet which is 1,000 square feet less than the 6,000 square feet required, pursuant to Section 1B02.3.C.1 of the B.C.Z.R. Put simply, the current lot width and square footage renders the lot unfit for development absent variance relief. Ms. Moskunas testified in support of the relief and indicated that virtually every lot in the Lansdowne subdivision was platted as only 25 feet wide. The lots were originally marketed such that buyers could purchase as few or as many as they desired based on their financial ability, and were clearly intended to be buildable. The subdivision was recorded in June 1889, well prior to the adoption of the current zoning regulations which now require a lot width of 55 feet and square footage of 6,000 square feet, thus in a sense rendering the subject property nonconforming. Petitioner’s building of a single-family residence would be in-fill development as most of the subdivision has already been improved, save for a few other vacant lots. In-fill development is a preferred manner of development due to the fact that water, sewer and other necessary utilities are already accounted for and thus impacts the land and the surrounding neighborhood minimally.

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 September 16,

2010 which indicates that they do not oppose the construction of a single-family dwelling at the subject location as that is preferred over any use allowed in a B.L. Zone. Fourth Avenue is a residential street. The adjacent property to the east fronts on Fourth Avenue and is a residential property that is zoned D.R.5.5. The adjacent property to the north and the property to west are zoned B.L., but are currently being used as residences. The property to the south is zoned R.O. and is being used for residential accessory structures. Petitioners do not own sufficient adjoining land to conform to the minimum width and area requirements and therefore do not meet the standards stated in Section 304.1.C of the B.C.Z.R. Additionally, there appears to be several existing undersized lots in the neighborhood. As previously indicated, the Planning Office does not oppose the variance request. If the request is granted, certain conditions shall apply to the proposed dwelling: submit building elevations for review and approval prior to the issuance of any building permit; proposed dwelling shall be compatible in size, exterior building materials, color, and details as that of the existing dwellings in the area; any future conversions to a non-residential use will be prohibited or not permitted unless authorized by a special hearing; provide landscape along the public road if applicable. Note: A zoning change for the subject parcel to DR 5.5 would not be inappropriate in light of the surrounding zoning and uses.

Considering all of the testimony and evidence presented, I am persuaded to grant the requested variance relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The property is certainly unique given the age of the record plat that dates back to 1889 and the fact that the majority of the lots in the Lansdowne subdivision were platted with widths of 50 feet and square footage below 6,000 square feet, depending on the number of lots originally purchased.

I also find that practical difficulty and undue hardship would befall Petitioners if the requested variance relief were not granted. No matter what improvement would be planned, there is no possible way for Petitioners to comply with the 55 foot minimum lot width and 6,000 minimum square footage required in the D.R.5.5 Zone. Denying the variance request would also inhibit beneficial uses of the property that are otherwise permitted by the Regulations for Petitioners or any other prospective purchaser of the subject property.

I further find that the variances 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. As stated by the Planning comments, most of the surrounding properties are being utilized as residences, notwithstanding that the zoning may allow for other uses. Petitioners' intend to construct a single-family dwelling on the subject property for use as a residence.

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

THEREFORE, IT IS ORDERED this 26th day of October, 2010 by this Deputy Zoning Commissioner that Petitioners' Variance request from Section 1B02.3.C.1 to permit a lot width of 50 feet in lieu of the required 55 feet, and to approve an undersized lot containing 5,000 square feet in lieu of the required 6,000 square feet, be and are hereby **GRANTED**, subject to the following:

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. Building elevations shall be submitted to the Office of Planning for review and approval prior to the issuance of any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
3. Petitioners shall provide landscaping along the public road if applicable.

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