

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
NE side of River Drive Road; 90 feet E		
of Greenhill Road	*	DEPUTY ZONING
15 <sup>th</sup> Election District		
7 <sup>th</sup> Councilmanic District	*	COMMISSIONER
(6800 River Drive Road)		
	*	FOR BALTIMORE COUNTY
<b>Garey Simmons</b>		
<i>Legal Owner</i>	*	
<b>PLP XVI, LLC</b>		
<i>Contract Purchaser</i>	*	<b>CASE NO. 2011-0074-A</b>

\* \* \* \* \*

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NE side of River Drive Road; 90 feet E		
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15 <sup>th</sup> Election District		
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(6802 River Drive Road)		
	*	FOR BALTIMORE COUNTY
<b>Garey Simmons</b>		
<i>Legal Owner</i>	*	<b>CASE NO. 2011-0075-A</b>

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

These matters come before this Deputy Zoning Commissioner for consideration of Petitions for Variance. In each case number, Petitioner is requesting the following Variance relief:

Case No. 2011-0074-A: For the property located at proposed 6800 River Drive Road, the legal property owner, Garey Simmons, and the contract purchaser, PLP XVI, LLC, request Variance relief from Section 1B02.3.C.1 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 for a proposed dwelling on an existing lot of record.

Case No. 2011-0075-A: For the property located at 6802 River Drive Road, the legal property owner, Garey Simmons, requests Variance relief from Section 1B02.3.C.1 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 for an existing dwelling on an existing lot of record.

The subject properties and requested relief are more fully described on the site plans which were marked and accepted into evidence in each case as Petitioners’ Exhibit 1.<sup>1</sup>

Appearing at the requisite public hearing in support of the variance requests were the owner of the two properties, Garey Simmons, and Linda Kropp on behalf of the contract purchaser of proposed 6800 River Drive Road, PLP XVI, LLC. Also appearing in support of the relief was David Billingsley with Central Drafting & Design, Inc., the professional land surveyor who prepared the site plan. Attending as interested citizens were Robert and Deborah Rasinski of 6712 River Drive Road. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the properties which comprise proposed 6800 River Drive Road (Case No. 2011-0074-A) and existing 6802 River Drive Road (Case No. 2010-0075-A) are situated side-by-side and each rectangular in shape, though with an irregular pattern at the shoreline, and zoned D.R.5.5. The properties are located on the northeast side of River Drive Road, just east of the road’s intersection with Greenhill Road and north of North Point Road, in the Edgemere area of southeastern Baltimore County. The properties have water access, fronting on Greenhill Cove, which leads into Back River. In addition, the properties are part of the “Lynch Point” subdivision. As delineated on the SDAT Real Property Data Search printouts that were marked and accepted into evidence in each case as Petitioners’ Exhibit 2, proposed 6800 River Drive Road is identified as Lot 12 and consists of 7,150 square feet, and

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<sup>1</sup> The site plans and exhibits for Case No. 2011-0074-A and 2011-0075-A are contained in the respective case files, however, exhibit numbers are identical for each case.

existing 6802 River Drive Road is identified as Lot 13 and consists of 7,752 square feet. The lots are each 50 feet wide by approximately 130 feet deep (Lot 12) and 145 feet deep (Lot 13), respectively (due to irregularities in the shoreline). The subdivision plat of Lynch Point that was marked and accepted into evidence in each case as Petitioners' Exhibit 3 shows the location of the lots in question. As shown on the site plans, 6802 River Drive Road is currently improved with a 1½-story single-family dwelling consisting of approximately 1,338 square feet. There is also a driveway that runs along the left side of property from the road, as well as an attached deck and small shed situated on the water side. Proposed 6800 River Drive Road is unimproved. Both lots are shown on the subdivision plat as separate lots and each has their own tax identification number and is referenced separately in the SDAT Real Property Data Search.

Petitioner Mr. Simmons purchased the two lots in February 2007 and has resided at 6802 River Drive Road (Lot 13) since that time. During that period, Petitioner indicated that Lot 12 (proposed 6800 River Drive Road) has remained vacant and unimproved. Photographs of both properties were marked and accepted into evidence in each case as Petitioners' Exhibits 6A through 6E. Mr. Simmons indicated he has merely maintained the unimproved property by cutting the grass and keeping it neat and clean. At this juncture, he desires to sell the Lot 12 property to PLP XVI, LLC, of which Ms. Kropp is a member. Mr. Kropp, in turn, desires to construct a single-family dwelling on the property. As shown on the site plans, the new home would be constructed with a 10 foot setback on the side adjacent to Mr. Simmons and a 12 foot setback on the side adjacent to Mr. and Mrs. Rasinski.<sup>2</sup> Elevation drawings that were marked and accepted into evidence (in Case No. 2011-0074 only) as Petitioners' Exhibit 7 illustrate a home similar in style to Mr. Simmons' home next door. The main differences are that the

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<sup>2</sup> Although the site plans show a side yard setback adjacent to the Rasinski property of 13.7 feet, Mr. Billingsley indicated that the new home would actually be 28 feet wide and not the 26.3 feet depicted on the site plan. As such, the site plans were redlined to reflect the planned 28 foot house width as well as the 12 foot side yard setback.

dormers on the proposed home would be on each side, rather than facing front and back as with Mr. Simmons' home, and the home would be more elevated due to the need to comply with today's base flood elevation and protection levels.

Also testifying in the case were Mr. and Mrs. Rasinski. They own the property at 6712 River Drive Road, immediately adjacent to Lot 12. Their property is a "double" lot in that it is approximately 100 feet wide and consists of Lots 10 and 11 of the Lynch Point subdivision. It also appears from the SDAT Real Property Data Search that their property was redeveloped recently, with the home having been built in 2005. Mr. Rasinski indicated that they were initially opposed to a new dwelling on Lot 12 because they were concerned that a large, tall home would overwhelm the relatively small property and also negatively impact their property next door; however, upon being informed in more detail of Mr. Simmons' and Ms. Kropp's plans and the type and size of home proposed, they indicated they do not have any objection to the project.

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 14, 2010 which indicates that Petitioner Mr. Simmons owns sufficient adjoining land to conform to the minimum width and area requirements and therefore does not meet the standards stated in Section 304.1.C of the B.C.Z.R. However, there appear to be several existing undersized lots in the neighborhood. As such, the Planning Office does not oppose Petitioners' request. If the request is granted, conditions shall apply to the proposed dwelling as follows: submit building elevations for review and approval prior to the issuance of any building permit; the dwelling shall be compatible in size, materials and architectural detail as that of the existing dwellings in the area; and provide landscaping along the public road, if applicable. Comments were received

from the Department of Environmental Protection and Resource Management (DEPRM) dated October 12, 2010 which indicates they have reviewed the subject zoning petitions for compliance with the goals of the State-mandated Critical Area Law listed in the Baltimore County Zoning Regulations, Section 500.14. Based upon this review, they offered comments which will be expounded on further in this Order. Comments were received from the Bureau of Development Plans Review dated September 8, 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 of all the testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. Without variance relief, Lot 13 would be in violation of the current regulations and Lot 12 could not be developed. Obviously, strict compliance with the Zoning Regulations would create a hardship and would result in a denial of a reasonable and sufficient use of the property. The evidence indicates that the subject properties were platted as separate lots of record since 1926. As is often the case with older subdivisions, many of the lots in the Lynch Point subdivision are undersized and do not meet current width and setback requirements. As shown in the aerial photographs that were marked and accepted into evidence in each case as Petitioners' Exhibit 5, the property at 6802 River Drive Road is representative of many of the lots in the subdivision, undersized and improved with a primary structure built over 50 years ago, or redeveloped much more recently. Similarly, proposed 6800 River Drive Road, although unimproved, is almost identical in metes and bounds to other lots in the subdivision. Hence, in

my judgment, the imposition of current zoning disproportionately impacts the subject lots as compared to other properties in the zoning district.

Further, I find these variance requests can be granted in strict harmony with the spirit and intent of Section 307 of the B.C.Z.R., as interpreted in *Cromwell v. Ward*, 102 Md.App. 691 (1995). The only deficiency in both of these instances is the lot width, which is five feet shy of the required 55 feet, and in one case, is to legitimize an existing condition. There are no other variances requested or required. It is also noteworthy that this type of proposed in-fill development is a preferred manner of development, since the new dwelling at proposed 6800 River Drive Road, which has existed as a lot of record for over 80 years, can utilize existing infrastructure and public services. Hence, the variance requests can be granted without any detriment to the public health, safety and general welfare of the surrounding locale.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence presented, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 27<sup>th</sup> day of October, 2010 by this Deputy Zoning Commissioner that Petitioners' Variance request in Case No. 2011-0074-A for proposed 6800 River Drive Road from Section 1B02.3.C.1 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 for a proposed dwelling on an existing lot of record be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's Variance request in Case No. 2011-0075-A for 6802 River Drive Road from Section 1B02.3.C.1 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 for an existing dwelling on an existing lot of record be and is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for their building 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. Petitioners shall submit building elevations 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.
4. The base flood elevation for this site is 7.7 feet (NAVD 88). The flood protection elevation for this site is 8.7 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.
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. The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.
7. Flood-resistant construction shall be in accordance with the Baltimore County Building Code which adopts, with exceptions, the International Building Code.
8. For Case No. 2011-0074-A, compliance with DEPRM comments as follows:
  - a) This lot (Lot 12) is located within an Intensely Developed Area (IDA) and a Buffer Management Area (BMA) of the Chesapeake Bay Critical Area (CBCA) and is subject to meeting a 10% reduction of existing pollutant levels from the site. Mitigation necessary to achieve the 10% pollutant reduction will minimize adverse impacts on water quality that may result from pollutants discharged from structures or conveyances or that have run off from surrounding lands.
  - b) The proposed development activity must comply with all IDA and BMA requirements, including the minimization of impacts within the 100-foot Critical Area Buffer, prior to building permit approval and will therefore conserve fish, wildlife, and plant habitat.

- c) The proposed development will be required to meet all IDA and BMA requirements and therefore will be consistent with established land use policies for development in the CBCA, 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.

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