

**IN RE: PETITION FOR SPECIAL HEARING**

W side of Jarrettsville Pike; 680' NE  
of the c/l Hillendale Heights Road  
10<sup>th</sup> Election District  
3<sup>rd</sup> Council District  
**(14120 Jarrettsville Pike)**

Robert A. Penoyer, Jr.  
Petitioner

\* BEFORE THE  
\* OFFICE OF ADMINISTRATIVE  
\* HEARINGS FOR  
\* BALTIMORE COUNTY  
\* **CASE NO. 2012-0173-SPH**

\* \* \* \* \*

**IN RE: PETITION FOR SPECIAL HEARING**

W side of Jarrettsville Pike; 780' NW  
of the c/l of Hillendale Heights Road  
10<sup>th</sup> Election District  
3<sup>rd</sup> Council District  
**(14200 Jarrettsville Pike)**

Robert A. Penoyer, Jr.  
Petitioner

\* BEFORE THE  
\* OFFICE OF ADMINISTRATIVE  
\* HEARINGS FOR  
\* BALTIMORE COUNTY  
\* **CASE NO. 2012-0174-SPH**

**OPINION AND ORDER**

These matters come before the Office of Administrative Hearings for Baltimore County for consideration of two companion Petitions for Special Hearing. In the first case, No. 2012-0173-SPH, Petitioner is requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To permit the alteration of the lot size requirement of 1.5 acres to an area of .0838 acres per Section 1A04.381b of the B.C.Z.R.; and
- To permit a front yard setback of 100 feet from the centerline of a collector road in lieu of the required 150 feet per Section 1A04.382b of B.C.Z.R.; and
- To permit a side yard setback of 20 feet on both sides in lieu of the required 50 feet per Section 1A04.382b of B.C.Z.R.

In the second case, No. 2012-0174-SPH, Petitioner is requesting Special Hearing relief as follows:

- To permit the alteration of the lot size requirement of 1.5 acres to an area of 0.822 acres per Section 1A04.381b of B.C.Z.R.; and
- To permit a front yard setback of 100 feet from the centerline of a collector road in lieu of the required 150 feet per Section 1A04.382b of B.C.Z.R.; and
- To permit a side yard setback of 20 feet on both sides in lieu of the required 50 feet per Section 1A04.382b of B.C.Z.R.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

The Zoning Advisory Committee (ZAC) comments were received as to both cases and are made a part of the record of each case. Comments were received from the Department of Environmental Protection and Sustainability dated February 15, 2012, which state:

Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Comments were received from the Department of Planning dated February 13, 2012, which state:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. This department does not oppose the petitioner's request, as the proposed lot configuration is consistent with the existing lots along this portion of Jarrettsville Pike. However, this office is required to provide a statement of finding to the Administrative Law Judge indicating how the proposed construction complies with the current RC 5 requirements. To prepare the statement of finding, the following information must be submitted to this office:

1. Photographs of existing adjacent dwellings.
2. Submit building elevations (all sides) of the proposed dwelling to this office for review and approval prior to the hearing. 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) uses 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.

3. 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.
4. 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.

Provide landscaping along the public road, if consistent with the existing streetscape.

Additional comments were received from the Department of Planning dated March 12, 2012, which state:

The Department of Planning reviewed the petitioner's request, accompanying site plan and provided a recommendation not opposing the petitioner's request to the Administrative Law Judge on February 13, 2012. As part of the aforementioned recommendation this department requested a list of items to be submitted for review and approval that demonstrated how the subject proposal would meet the performance standards set forth in Section 1A04.4 of the Baltimore County Zoning Regulations.

This department has reviewed typical elevation drawings of the proposed dwelling and photographs of the surrounding community and finds the proposal to be in accordance with the spirit and intent of the performance standards listed within Section 1A04.4 of the Baltimore County Zoning Regulations. In sum, this office does not oppose the subject request.

The above noted cases were scheduled for hearing before me on Monday, February 27, 2012. Pursuant to the February 13, 2012, comment from the Department of Planning, a statement of "statement of finding" required to be presented was not complete. Petitioner could not therefore proceed and the matter was continued in order that Petitioner might provide the Department of Planning with the necessary information for it to issue its "finding." As noted above, the Department of Planning did in fact submit the required document on March 12, 2012.

Appearing at the requisite public hearing held on Monday, April 23, 2012, was Petitioner Robert A. Penoyer, Jr. and Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., the professional land surveyors who prepared the site plan. Glen Kukucka, Lesley Wilkerson and John Disney appeared

as Protestants. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Mr. Doak proffered the Petitioner's case. Petitioner owns the two subject unimproved side by side lots, zoned RC 5 and fronting on Jarrettsville Pike. He stated that Petitioner's family created a number of lots in the late 1950s (Petitioner's Exhibit 5). All are now developed with homes except for the two which are the subject of the present cases. He further related that in those early years no subdivision process was required; a survey divided the home sites which were then simply deeded. At the time of deeding, the subject lots were sufficient in size to construct a lawful dwelling. It was only when zoning regulations were imposed on the sites in the 1970s that the size of the two subject lots were rendered below the minimum 1.5 acre requirement that exists today. Petitioner wishes now to market and sell the subject lots for development.

The Petitioner requests the subject special hearing as to the lot sizes of the two sites in recognition of their status as buildable lots when they were created prior to the imposition of the present zoning regulations; as well as their configuration with the existing lots along the affected section of Jarrettsville Pike. The front yard setback of 100 feet in lieu of the required 150 feet is requested in order to align a subsequent structure built on each lot to the fronts of the existing homes already on the street. Mr. Doak observed that the side yard setbacks of the adjacent lots are 10 feet or less; the requested 20 feet in lieu of the presently required 50 feet, therefore, if granted, will be twice that which exists presently in the adjacent area.

Mr. Doak then addressed the requirements set forth in Section 502.1 of the B.C.Z.R as they relate to these two sites. Those requirements state that a request such as that made by the Petitioner will not be approved unless there is a showing that the request will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;

- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

The above requirements were responded in order: A) Petitioner's request is consistent with that which already exists in the immediate area; B) That the creation of one home on each lot would add, according to the State Highway Administration, approximately five additional trips per day to the area, minimizing any detrimental effects; C) The Jacksonville Volunteer Fire Department is located approximately one-quarter mile away from the subject sites; D) Two single family homes will not over crowd a street of similar one family homes; E) Each site will need to be perced and will be serviced by an individual well and septic system. The septic area will remain wooded. F) Homes to be built will be 35 feet high, similar to the other already existing structures predominantly in the area; G) The present zoning requirements of the two subject lots are in fact the subject of the special hearing requests in this case; H) When permits are requested, forest conservation issues, pursuant to the comment issued by the Department of Environmental Protection and Sustainability will be satisfied; I) No streams or wetlands will be affected in any way and perced wells will have to be

approved before permits are issued.

Mr. Glen Kukucka, a neighbor, appeared and testified in opposition to Petitioner's request. He takes issue with Petitioner's allegation that there are actually two lots involved in this matter. He notes that his research of the State Department of Assessments and Taxation records show only one lot. (In response, Petitioner submitted separate real property tax bills, with separate account numbers for the subject sites, which were marked as Petitioner's Exhibits 9A and 9B. He is concerned that two more septic systems and wells will further deteriorate that which already exists in the area. He stated that his yield was chronically low and that similar problems existed at other neighboring homes. He did not, however, provide any data or testimony supporting these allegations; nor did any other neighboring residents do so. He is also concerned about additional traffic generated by the construction of two additional homes and fears that, given the side yard setbacks requested, a fire could conceivably travel from one structure to its neighbor. He is also wary of the quality of the local volunteer fire department. Finally, he questions the viability of the underlying aquifer as a "potential" cause of concern especially if two new homes are added. No additional submissions or expert testimony were presented by Protestants regarding this concern.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and after considering the testimony and evidence offered by Petitioner, I find that the special hearing requests should be granted, respectively.

THEREFORE, IT IS ORDERED, this 9TH day of May, 2012 by this Administrative Law Judge that Petitioner's Special Hearing request in Case No. 2012-0173-SPH for relief filed under Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows:

- To permit the alteration of the lot size requirement of 1.5 acres to an area of .0838 acres per Section 1A04.381b of the B.C.Z.R.; and
- To permit a front yard setback of 100 feet from the centerline of a collector road in lieu of the required 150 feet per Section 1A04.382b of B.C.Z.R.; and

To permit a side yard setback of 20 feet on both sides in lieu of the required 50 feet per Section 1A04.382b of B.C.Z.R.,

be and are hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's Special Hearing request in Case No. 2012-0174-SPH as follows:

- To permit the alteration of the lot size requirement of 1.5 acres to an area of 0.822 acres per Section 1A04.381b of B.C.Z.R.; and
- To permit a front yard setback of 100 feet from the centerline of a collector road in lieu of the required 150 feet per Section 1A04.382b of B.C.Z.R.; and
- To permit a side yard setback of 20 feet on both sides in lieu of the required 50 feet per Section 1A04.382b of B.C.Z.R.,

be and are hereby GRANTED.

The relief granted herein shall be subject to the following:

1. The Petitioner may apply for his building permit and may be granted same upon receipt of this Order; however the Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioner will be required to return and be responsible for returning said property to its original condition.
2. Development of the property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

3. Compliance with the ZAC comments made by the Department of Planning dated February 13, 2012, a copy of which is attached hereto and made a part hereof.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed \_\_\_\_\_  
LAWRENCE M. STAHL  
Managing Administrative Law Judge for  
Baltimore County

LMS:pz