

IN RE: PETITIONS FOR VARIANCE	*	BEFORE THE
NE/S Maple Avenue, 476' & 526' NW c/line of	*	ZONING COMMISSIONER
Homberg Avenue	*	
(333 Maple Avenue [Lot 67] &	*	OF
333A Maple Avenue [Lot 68])	*	
15 th Election District	*	BALTIMORE COUNTY
6 th Council District	*	
James J. Perkowski	*	Case Nos. 2009-0341-A &
<i>Petitioner</i>	*	2009-0342-A
	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Variance filed by James J. Perkowski, for two (2) adjacent properties known as 333 and 333A Maple Avenue. Since the properties are owned by the same person and are located adjacent to one another, the two cases were heard contemporaneously. In Case No. 2009-0341-A (Lot 67), the Petitioner, requests variance relief from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a buildable lot with a lot width of 50 feet in lieu of the required 55 feet. In Case No. 2009-0342-A (Lot 68), the Petitioner requests similar relief. Specifically, relief is requested from B.C.Z.R. Section 1B02.3C.1 to permit a new (replacement) dwelling on a lot with a lot width of 50 feet in lieu of the minimum required lot width of 55 feet. The subject properties and requested relief are more particularly described on the site plan submitted in each case, which were accepted into evidence and respectively marked as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requests were James J. Perkowski, property owner, and David Billingsley of Central Drafting and Design, Inc., the consultant responsible for preparation of the site plans. There were no Protestants or other interested persons present. It is noted that I received confirmation from the adjoining and

adjacent property owners Douglas Simmons (331 Maple Avenue) and Peter Friedel (335 Maple Avenue), indicating that they do not oppose Petitioner's requested zoning relief.

Testimony and evidence offered revealed that the subject adjacent parcels are located on the northeast side of Maple Avenue, just west of Homberg Avenue in Essex and within the Martin State Airport Restriction Area. The lots are identified as Lots 67 and 68 in the Henry Homberg subdivision, which is an older subdivision that was platted and recorded in the Land Records in 1919, thus prior to the first set of zoning regulations in Baltimore County as shown on Petitioner's Exhibit 4. As is often the case with older subdivisions, many of the lots are undersized and do not meet current area and width requirements. In this regard, each of the subject lots contains a gross area of over 10,000 square feet, more or less, zoned D.R.5.5. James Perkowski (and his father before him) have owned the lots since 1948. Mr. Perkowski, now 61 years of age, has resided at 333 Homberg Avenue all of his life. He now desires to replace the family home built in 1929 with a new and updated single-family dwelling on Lot 68 for his own use. He comes before me seeking relief as set forth above to permit development of Lot 67 with a new single-family dwelling to be occupied by his niece, Rebecca Reynolds. Testimony indicated that both new dwellings would meet all front, side and rear setback requirements. Relief is requested to approve lot widths of 50 feet respectively and to approve the properties as undersized lots (width at building line less than that required by the area regulations) to permit the proposed development. Photographs and real property data search records obtained from the Maryland Department of Assessments and Taxation illustrate the pattern of development and show that the subject properties and surrounding community were built on 50-foot wide lots which is also confirmed by the Office of Planning in its Zoning Advisory Committee (ZAC) comment. Mr. Perkowski, in discussing the pattern of development of the neighborhood,

indicated similar relief was granted by Deputy Zoning Commissioner John V. Murphy by his Order in Case No. 07-011-A for 323 Maple Avenue. He opined that there is little traffic on Maple Avenue as it dead ends at the Deep Creek Elementary School and that allowing this new home to be built will not adversely affect traffic in the community, will not increase residential density beyond that otherwise allowable by the Zoning Regulations as a result of granting this variance as the lot areas exceed the minimum lot area of 6,000 square feet, and finally he noted that the front yard setbacks for both of the proposed houses will be the average of the adjacent houses as required by the regulations.

Testimony offered in support of the requests was that without variance relief, Lots 67 & 68 could not be developed. Obviously, strict compliance with the regulations would create a hardship as the zoning regulations result in a denial of a reasonable and sufficient use of the property (*See Belvoir Farms v. North* 355 Md. 259 [1999]). Moreover, based on the testimony and evidence presented, the Petitioner is entitled to his variances as he has met the requirements of Section 304 of the B.C.Z.R. (*See Mueller v. People's Counsel for Baltimore County* 177 Md. App. 43 [2007]). In my view, the relief requested will not result in any detriment to the health, safety and general welfare of the surrounding locale and, therefore, would meet the spirit and intent of Section 307 for relief to be granted. As indicated, the proposed dwellings will meet all front, side and rear setback requirements and will be situated on the lots consistent with other houses in the community. The only deficiency in both of these instances is the lot width, which is 5 feet shy of the required 55 feet.

Pursuant to the advertisement, posting of the properties 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 15th day of September 2009, that the Petition for Variance filed in Case No. 2009-0341-A seeking relief from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a lot with a width of 50 feet in lieu of the minimum required 55 feet for a new single-family residence on Lot 67, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Variance filed in Case No. 2009-0342-A seeking relief from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a lot with a width of 50 feet, in lieu of the minimum required 55 feet for a new (replacement) single-family dwelling on Lot 68, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED subject to the following conditions:

1. The Petitioner may apply for his building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until the thirty (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. The Petitioner shall submit building elevations to the Office of Planning for review and approval prior to the issuance of any building permit. The proposed dwelling(s) shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
3. Provide landscaping along the public road if consistent with the existing streetscape.

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

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
of Baltimore County