

IN RE: PETITION FOR ZONING VARIANCE
22/2 Philadelphia Ave., 170'
W of the c/l of Patapsco Ave.
(225 Philadelphia Avenue)
15th Election District
1th Councilman's District
Joseph Lutz, et al.
Petitioner

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 90-125-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a variance to permit a lot width of 50 feet in lieu of the minimum required 55 feet in accordance with Petitioner's Exhibit 1.

The Petitioner appeared and testified. Appearing as Protestants in the matter were Carolyn L. Hege, Eva C. Bishop, Emil Chivavillo, and Clarence M. Erdman, all nearby residents of the area.

Testimony indicated that the subject property, known as 225 Philadelphia Avenue, consists of .26 acres zoned D.R. 5.5, and is currently unimproved. Said property consists of two lots known as Lots 57 and 58 of Chesapeake Park, both of which are 25 feet wide, and is located within the Chesapeake Bay Critical Area on North East Creek. Petitioner proposes to develop the subject property with a single family dwelling compatible with other homes in the neighborhood. Mr. Lutz testified that the majority of the lots are 50-foot wide lots which have been developed in accordance with the subdivision plan of Chesapeake Park which was implemented in 1911, and introduced a copy of the subdivision plat marked Petitioner's Exhibit 2. Mr. Lutz testified he purchased four lots, namely Lots 57, 58, 60 and 61 in July, 1987 for purposes of investment. Testimony indicated that all four lots were deeded in one deed and described as two separate parcels. Subsequently, he sold Lots 60 and 61 to Carolyn L. Hege and her husband who later purchased the adjoining Lot 59 to meet the lot width require-

ments. Mr. Lutz testified that he does not own any adjoining land to conform substantially to the lot width requirements. Testimony indicated adjoining Lot 56 is owned by Mr. Erdman and Lots 67, 68 and 69 were owned by Mr. Bishop. Subsequent to the hearing, Mr. Lutz submitted copies of the deeds to the adjoining properties to support his position that Petitioner does not own sufficient land to conform to the lot width requirements. Further, the documents indicate the lots were purchased by D & J Developers, Inc., a corporation formed by Mr. Lutz and his partner, David Seling, at the time of settlement on the subject property.

Ms. Hege testified in opposition to the relief requested, stating that at the time she purchased Lot 59 she did not understand the 25-foot access road adjacent to her property would be shared with Lots 57 and 58. Further, she was concerned as to the type and quality of house that would be built on Lots 57 and 58 which she contends will block her view of the water and depreciate the value of her home. Mr. Erdman, adjoining property owner of Lots 55, 56, 61 and 62, appeared to express his concern that any house built on the property should meet all front, side, and rear yard setback requirements. Ms. Bishop, owner of Lots 67, 68 and 69 which are diagonal to the subject property, testified she did not understand why Petitioner could build on the property as she had been told by someone in one of the County departments that waterfront property in that area was undevelopable.

A review of Section 304 of the Baltimore County Zoning Regulations (B.C.Z.R.) indicates that a single family dwelling may be erected on a lot having a width less than that required by the regulations provided three conditions are met. The three conditions are as follows:

- 1) That the lots are lots of record prior to adoption of the zoning regulations;

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- 2) That all other requirements of height and area regulations are complied with;
- 3) That the owner does not own sufficient adjoining land to conform substantially to the width and area requirements.

A review of the conditions in this instance would appear to indicate that the subject property meets the requirements.

After due consideration of the testimony and evidence presented, in the opinion of the Zoning Commissioner, the relief requested sufficiently complies with the requirements of Sections 307.1, 307.2 and 500.14 of the Baltimore County Zoning Regulations (B.C.Z.R.) and should therefore be granted. There is no evidence in the record that the subject variance would adversely affect the health, safety, and/or general welfare of the public. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

The facts and evidence presented tend to establish that special conditions or circumstances exist which are peculiar to the land or structures located within the Chesapeake Bay Critical Area of Baltimore County that to deny the relief requested would result in practical difficulty, unreasonable hardship, or severe economic hardship upon the Petitioner; and that strict compliance with the Chesapeake Bay Critical Area requirements and the B.C.Z.R. would deprive the Petitioner of rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Areas in Baltimore County. The granting of the relief requested will not confer upon the Petitioner any special privilege that would be denied by the critical area regulations to other lands or structures within the Chesapeake Bay Critical Area. Clearly, the request is not based upon conditions or circumstances which are the result of the Petitioner's actions, nor does the request arise from a condition relating to land or

building use, either permitted or non-conforming, on another property. The relief requested is in harmony with the general spirit and intent of the Critical Area legislation for Baltimore County and conforms to the requirements as set forth in Section 500.14 of the B.C.Z.R.

In accordance with Section 500.14 of the B.C.Z.R., the Director of the Department of Environmental Protection and Resource Management has submitted recommendations which describe what steps the Petitioner must take to insure that the relief requested complies with the following Chesapeake Bay Critical Area requirements to:

- 1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- 2) Conserve fish, wildlife, and plant habitat;
- 3) 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.

These recommendations shall be attached hereto and become a permanent part of the decision rendered in this case. There is no evidence in the record that the relief requested would adversely affect the health, safety, and/or general welfare of the public provided there is compliance with the requirements of the Department of Environmental Protection and Resource Management as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and for the reasons given above, the relief requested should be granted, subject to compliance with the conditions hereinafter set forth.

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WHEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 10th day of February, 1990 that the Petition for Zoning Variance to permit a lot width of 50 feet in lieu of the minimum required 55 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

- 1) The Petitioners may apply for their building permit 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 is reversed, the Petitioners would be required to return, and be responsible for, returning, said property to its original condition.
- 2) The relief granted herein is conditioned upon Petitioner, or any subsequent owner of the property building a single family dwelling and any accessory structures in strict compliance with the zoning regulations and not requesting any further variances for the subject property.
- 3) Development of the property will comply with all County Building Code requirements; and,

IT IS FURTHER ORDERED that the Petitioner shall comply fully and completely with all requirements and recommendations of the Department of Environmental Protection and Resource Management, as set forth in their comments dated May 17, 1989, attached hereto and made a part hereof.

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

CRITICAL AREA
#575
PETITION FOR ZONING VARIANCE
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-125-A
The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 1B02.1.C.1.1. To permit a 50' lot width in lieu of the minimum 55'.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reason: (Indicate hardship or practical difficulty)

- 1) CONSIDERABLE AMOUNT OF HOMES ARE ARE ON 50' LOTS
- 2) NEED TO SELL LOT TO COVER EXPENSES IN FINANCIAL DIFFICULTY

Property is to be posted and advertised as prescribed by Zoning Regulations.

I or we, agree to pay expenses of all Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser:
(Type or Print Name)
Signature
Address
City and State
Attorney for Petitioner:
(Type or Print Name)
Signature
Address
City and State
Attorney's Telephone No.
Legal Owner(s):
(Type or Print Name)
Signature
Address
City and State
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Name
Address
City and State
Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 12th day of February, 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 6th day of February, 1990, at 9:30 AM.

Zoning Commissioner of Baltimore County

ESTIMATED LENGTH OF HEARING (1/2HR) - 1/2HR
AVAILABLE FOR HEARING MON. TUES. WED. - NEXT TWO MONTHS
ALL OTHERS
STATED BY 2/2/90 DATE 2/2/90

Phone: 687-6922

FRANK S. LEE
Registered Land Surveyor

1277 NEIGHBORS AVE. - BALTIMORE, MD. 21237

May 25, 1987

Lots 57 and 58, Sheet 1, Plan "D", plat of Chesaco Park, 6/164
15th District Baltimore County, Maryland

Beginning for the same at the northwest corner of lot 58 and the center line of a 25 foot road as laid out and shown on Sheet 1, Plan "D", Chesaco Park, said plat being recorded among the land records of Baltimore County in Plat Book 6 folio 164; thence running and binding on the northern outline of lots 57 and 58 in an easterly direction 50 feet; to the division line between lots 56 and 57; thence binding on said division line in a southerly direction 250 feet more or less to the waters of Northeast Creek; thence binding on the waters of Northeast Creek in a southeasterly direction 40 feet more or less to the eastern outline of lot 71; thence binding on the eastern and northern outline of lot 71 as follows: in a northerly direction 37 feet more or less and in a westerly direction 11.26 feet, thence binding on the western outline of lot 58 in a northerly direction 225 feet more or less to the place of beginning.

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Carolyn L. Hege	227 Philadelphia Ave.
Eva C. Bishop	219 Philadelphia Ave.
Emil Chivavillo	219 Philadelphia Ave.
Clarence M. Erdman	409 Bishop Ave.

D & J Developers, Inc.
CUSTOMER SERVICE
RECEIVED
JAN 26 1990

ZONING OFFICE

January 26, 1990

Zoning Commission
Baltimore County

RE: 90-125A, Case No.

To Whom It May Concern:

It has been brought to my attention that when I filed the zoning variance, I filed the papers in the name of Joseph William Lutz, as an individual. However, when I received the deed yesterday, I was informed that the property is deeded under D & J Developers, Inc. David Seling and I have an equal share in D & J Developers, Inc.

I am sorry for causing an inconvenience to you due to this error in filing. I have supplied your office with the Articles of Incorporation for D & J Developers, Inc. If you have any further problems in reference to this, please call.

Sincerely,

Joseph W. Lutz, Jr.
David Seling

JWL/djl

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
JOSEPH LUTZ	5409 LUTE HILL RD. 21216

SIGNATURE [Signature] DATE 1/2/82

_____ Date _____

among the Land Records of Baltimore County in Liber E.H.K., Jr. No. 5827, 769, unto BARNEY P. RUTH and SHARON L. RUTH, his wife, the grantors herein.

And being part of the tract of land which by Deed dated May 19, 1951 and among the Land Records of Baltimore County in Liber G.L.B. No. 1972, Folio 110, was conveyed unto the said BARNEY P. RUTH and SHARON L. RUTH, his wife, the grantors herein.

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the division line between Lots Numbered 72 and 73; thence westerly along the south side of Philadelphia Avenue 23 feet to Lot Numbered 74; thence southerly along Lot Numbered 74, 275 feet more or less, to the waters of Back River; thence southeasterly along the waters of Back River 23 feet to Lot Numbered 72; thence northerly along Lot Numbered 72, 275 feet more or less, to the place of beginning.

1836 MAY 21 21000 HSC

7-1-87
PAGE ONE OF TWO PAGES
CULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE R DATE 7-30-87
CLERK 7-30-87

40-125-1
puc 139-40

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(410) 887-6333
J. Robert Haines
Zoning Commissioner

August 18, 1989

NOTICE OF HEARING

*Donald F. Rosenbaum
County Executive*

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 105 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Zoning Variance
CASE NUMBER: 90-125-A
827 Philadelphia Avenue, TOWSON of the c/o of Petapoco Avenue, 90-SE of c/o of Philadelphia Avenue
225 Philadelphia Avenue
15th Election District - 7th Councilmember
Petitioner(s): Joseph Lutz
HEARING SCHEDULED: FRIDAY, OCTOBER 6, 1989 at 9:30 a.m.

Measurements to permit a 50 ft. lot width in lieu of the minimum 55 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

JRH:gs
cc: Joseph Lutz
File

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 406
Towson, Maryland 21204
(301) 897-3554

RECEIVED
AUG 3 1989
ZONING OFFICE
July 31, 1989

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, MD - 21204

Dennis F. Rasmussen
County Executive

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 515, 574, 576, 577, 578, 579, 580, 581, and 582.

Very truly yours,
Michael S. Flanagan
Michael S. Flanagan
Traffic Engineer Associate II

MSF/lab

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. J. Robert Haines
Zoning Commissioner

DATE: May 17, 1989

FROM: Mr. Robert W. Sheesley

SUBJECT: Lutz Property - Item #342 & 675
Philadelphia Avenue
Chesapeake Bay Critical Area Findings

RECEIVED
MAY 27 1989
ZONING OFFICE

SITE LOCATION

The subject property is located on Philadelphia Avenue in Chesaco Park. The site is within the Chesapeake Bay Critical Area and is classified as a Limited Development Area (LDA).

APPLICANT'S NAME Joseph W. Lutz Jr.

APPLICANT PROPOSAL

The applicant proposes a 1056 square foot single family dwelling on the lot. The applicant is requesting a Zoning Variance from Section 11B62.3.B of the 1981 Baltimore County Zoning Regulations, "to permit a lot width of 50 feet in lieu of the minimum 55 feet."

GOALS OF THE CHESAPEAKE BAY CRITICAL AREA PROGRAM

In accordance with the Chesapeake Bay Critical Area Program, all project approvals shall be based on a findings which assures that proposed projects are consistent with the following goals of the Critical Area Law:

1. "Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have runoff from surrounding lands;
2. Conserve fish, wildlife and plant habitat; and
3. Establish 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." CONAR 14.15.10.01.02

Handwritten: Hallet 5/16/89

Mr. J. Robert Haines
May 17, 1989
Page 3

4. Regulation: "A minimum 25 foot buffer shall be maintained around all non-tidal wetlands so that development or other activities will not adversely affect the wetlands or the wildlife contained therein" (Baltimore County Code Sec. 22-212(a)).

Finding: No tidal or non-tidal wetlands were found on this site or in the surrounding area of the site.

Upon compliance with the above requirements, this project will be approved. Please contact Mr. David C. Flowers at 887-3980 if you require additional information.

Robert W. Sheesley
Robert W. Sheesley, Director
Department of Environmental Protection
and Resource Management

RWS:NS:ju
Attachment

cc: The Honorable Ronald W. Hickernell
The Honorable Norman E. LaRage, Jr.
The Honorable Dale T. Volz



SHEET 1 - PLAN D 6/164
CHESACO PARK

RESURVEYED & PLATTED BY
REDING & HOWARD
CIVIL & LANDSCAPE ENGINEERS
SCALE 1"=100'
BALTIMORE, MD.
SEPTEMBER, 1911

Plat according to Mortgage
City Realty Company of Baltimore, Md.
To Sec. 117, Tr. 1, No. 1 of Pat. Co. of Baltimore, Md.
For the purpose of creating a park of 100 acres, more or less, in the City of Baltimore, Md.

See Sheet 2

See Sheet 2