

IN RE: PETITION FOR VARIANCE

S/S S. Seneca Road, 1,000' S of the c/l
New Section Road
(1347 S. Seneca Road)
15th Election District
6th Council District

Brock E. Mosser, et ux
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 04-095-A
*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Brock E. Mosser and Cecile P. Mosser. The Petitioners request variance relief from Sections 1A04.3.B.1&2 and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot size of 0.337 acres, more or less, in lieu of the minimum required 1.0 acres; side yard setbacks of 10 feet each in lieu of the required 50 feet each; and an accessory structure (garage) to be located in the front yard in lieu of the required rear yard. In addition, the Petitioners request approval of the subject property as an undersized lot, pursuant to Section 304, and any other variances deemed necessary by the Zoning Commissioner. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request was Brock E. Mosser, property owner. Appearing as interested persons were Ferdinand E. Doerfler and Mary K. Ende, adjacent property owners who reside on opposite sides of the subject property.

Testimony and evidence offered revealed that the subject property is a waterfront lot located with frontage on Seneca Creek and the south side of South Seneca Road in Bowleys Quarters. The property is also known as Lot 221 of Bowleys Quarters which was originally laid out and recorded in the 1920s, well prior to the adoption of zoning regulations in Baltimore County. Thus, the lot is undersized and does not meet many of the current regulations. As shown

on the site plan, the lot is approximately 50 feet wide and 378 feet deep and contains a gross area of 14,680 sq.ft., more or less; zoned R.C.5. Presently, the lot is improved with an old shore home and two small sheds, which were apparently constructed in the 1950s. The Petitioners acquired the subject property in 1995 and propose a significant redevelopment of the site. Testimony indicated that their plans were hastened due to the fact that the property suffered significant damage during Hurricane Isabel and the buildings were flooded with water up to 4 feet in depth. Thus, due to the age and condition of the dwelling, the Petitioners propose razing that structure and constructing a new home utilizing the existing foundation. The house will be setback approximately 115' from the bulkhead which is consistent with the distance provided by the houses on either side. The proposed new dwelling will be 30' x 36' in dimension and feature both a front porch and a rear porch/deck facing the water. In addition, the two sheds will be removed and a detached garage, 22' x 28' in dimension, is proposed. The garage will be located closer to the road and adjacent to an existing gravel driveway, which will be extended to provide additional parking adjacent to the garage.

Ms. Ende, who resides on the adjacent property to the east at 1349 S. Seneca Road, is not opposed to the Petitioners' plans. She raised several questions regarding the potential reconstruction of her house due to damage she sustained during the recent storm. Mr. Doerfler, however, is opposed to the Petitioners' request and believes that there should be no improvements made thereon.

Based upon the testimony and evidence presented, I am persuaded to grant the requested relief. To deny the Petitioners' request based on Mr. Doerfler's position would be unduly burdensome and unfair. If relief were denied, the Petitioners would be unable to make reasonable use of their property. Mr. Doerfler is not entitled to use the Petitioners' property as a side yard to his property. I am particularly persuaded to grant the request in view of the fact that the property has been improved with a shore home for many years and used for residential purposes throughout its existence. Although the proposed improvements are larger, the use is identical. Additionally, both the Doerfler and Ende lots are 50 feet wide as is the subject lot. Thus,

the proposal is consistent with adjacent uses and the surrounding locale. Although relief will be granted, several conditions will be attached, given the property's location within the Chesapeake Bay Critical Areas and in a floodplain.

First, the property presently does not have access to public sewer. It is my understanding that public sewer will eventually be available to the area and that a grinder pump will be installed to provide the connection to this property. Thus, building permits for the proposed dwelling can only be issued at such time as the Petitioners are able to connect to public sewer.

Second, the Department of Environmental Protection and Resource Management (DEPRM) enforces the Chesapeake Bay Critical Areas regulations. Thus, the proposed development will be subject to compliance with any recommendations made by DEPRM, pursuant to their Zoning Plans Advisory Committee (ZAC) comments dated October 8, 2003, a copy of which is attached hereto and made a part hereof.

Third, Petitioners shall comply with the recommendations made by the Development Review Division of the Department of Permits and Development Management regarding construction in a floodplain. Specifically, the proposed construction must be at an elevation of 11.2 feet or higher, pursuant to Federal Flood Insurance requirements. The Petitioner indicated he understood these requirements and agreed to comply with same.

Pursuant to the advertisement, posting of the property and public hearing on this Petition 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 29th day of October 2003 that the Petition for Variance seeking relief from Sections 1A04.3.B.1&2 and 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot size of 0.337 acres, more or less, in lieu of the minimum required 1.0 acres; side yard setbacks of 10 feet each in lieu of the required 50 feet each; and an accessory structure (garage) to be located in the front yard in lieu of the required rear yard, and approval of the subject property as an undersized lot, pursuant to Section 304, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 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) Compliance with the ZAC comments submitted by DEPRM and the Development Plans Review division of DPDM relative to Chesapeake Bay Critical Areas regulations and all other appropriate environmental, floodplain and B.O.C.A. regulations relative to the protection of water quality, streams, wetlands and floodplains. Copies of those comments have been attached hereto and are made a part hereof.
- 3) No building permits will be issued until such time as the connection to public sewer is available.
- 4) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.


LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

DATE: October 8, 2003

TO: Tim Kotroco

FROM: R. Bruce Seeley *RBS /TBT*

DATE: October 8, 2003

SUBJECT: Zoning Item 04-95
Address 1347 South Seneca Road (Mosser Property)

Zoning Advisory Committee Meeting of September 2, 2003

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

_____ The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.

X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

_____ If streams or wetlands occur on or within 200 feet of the property, the development of the property may need to comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).

_____ Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).

X Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

Additional Comments:

Reviewer: Keith Kelley

Date: 10/6/03

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For September 8, 2003
Item No. 095

DATE: September 26, 2003

The Bureau of Development Plans Review has reviewed the subject-zoning item.

The flood protection elevation for this site is 11.2 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.

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.

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.

Flood-resistant construction shall be in accordance with requirement of B.O.C.A. Inter. Building Code adopted by the county.

RWB:CEN:jrb

cc: File