

STAFF REPORT

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Nassau County
CONDITIONAL USE AND VARIANCE BOARD

Date of Hearing: February 23, 2017

Public Hearing Number: V16-002

A. General Information

Owner/Agent: Blue Potato Properties, LLC/John Dukes

Request: Seeking a relief from Sections 28.03 and 9.04(A) of the Land Development Code to reduce the minimum lot width from 90' to 73.44'. The property is located in the Residential Single Family 1 (RS-1) zoning district.

Applicable Regulations: Article 3, Section 3.05.B.3, Section 9.05, and Article 32 of the Land Development Code.

B. Site Information

Lot Size: 0.54ac

Tax Parcel Number(2013): 42-3n-28-0000-0001-0000

Location: Bellville Lane (at the end of Chester Road).

Directions: From the Intersection of SR 200/A1A and Chester Road travel north on Chester Road to its terminus at Bellville Lane(a 90 degree turn west). The entry to the property is within the curve radius on the north side(river side) of Bellville Lane.

C. Existing Land Uses

Subject Site: Vacant

Surrounding: North: Bells River
East: Single Family Dwelling
South: Single Family Dwelling
West: Single Family Dwelling

D. Existing Zoning

Subject Site: Residential Single Family – One (RS-1)

Surrounding: North: No local zoning classification (water)
South: Residential Single Family – One (RS-1)
East: Residential Single Family – One (RS-1)
West: Residential Single Family – One (RS-1)

E. FLUM Designation

Subject Site: Medium Density Residential (MDR)

Surrounding: North: No local designation (water)
South: Medium Density Residential (MDR)
East: Medium Density Residential (MDR)
West: Medium Density Residential (MDR)

F. Background

The Nassau County Conditional Use and Variance Board has previously heard two separate requests for the issuance of a variance to provide relief from the minimum Lot width requirement of the Land Development Code to facilitate the construction of a home on the subject property. The first application, V14-001, was filed by Malcom Adams (previous owner) in April of 2014. The application was ultimately denied by the Conditional Use and Variance Board.

The second application, V15-001, was filed by Blue Potato Properties LLC/John Dukes in June of 2015. This request was also denied. The Applicant subsequently appealed the denial of application V15-001 to the Board of County Commissioners of Nassau County in August of 2015. The BOCC upheld the Conditional Use and Variance Board's decision. On September 23, 2015, a Petition for Writ of Certiorari was filed in the Fourth Judicial Circuit Court by Blue Potato Properties LLC. On June 7, 2016, the Honorable Adrian G. Soud ultimately denied Blue Potato LLC's Petition.

In accordance with Section 5.05 (F) LDC;

If the conditional use and variance board denies a variance application, the denied application cannot be resubmitted, nor can any action be taken on a new application for basically the same variance on the same property, until twelve (12) months after the date the last petition was denied.

Twelve months have passed since application V15-001 was denied by the Conditional Use and Variance Board. The Applicant/Owner is exercising his right to submit a new variance application, including the submittal of new evidence, for the Conditional Use and Variance Board to review. Application V16-002 is reviewed as a new application and the Board is asked to weigh the new evidence submitted into the record.

The document packet submitted in support of application V16-002 contains a significant amount of information. Some of the information is new and has not previously been considered by the Board. The packet includes an expanded history of the property, evidence of an existing septic tank, testimony that a mobile home was once situated on the subject property, an assessment of the adjacent development patterns, rebuttal to some of the testimony provided by other citizens, and other items pertaining to the application.

History to 1993

In January of 1993, Willis and Dorothy Adams purchased a parcel of land measuring 1.7 acres with approximately 210' of frontage on the Bells River[ref. OR 675/91]. In March of 1993, a Warranty Deed was executed granting Michael Adams '1/3 interest as tenants in common in and to' the 1.7 acre property[ref. OR 677/856].

In December of 2000, a survey was commissioned by the Adams family dividing the subject 1.7 acre property into three separate building sites identified as Parcel A, Parcel B, and Parcel C.

In July of 2001, three quit-claim deeds were recorded in succession with the Clerk of the Court of Nassau County thereby dividing the 1.7 acre property into three individual parcels consistent with the previously described survey of Parcels A, B, and C. The recording of the deeds resulted in Michael Adams taking possession of Parcels A & B and Malcolm Adams(Applicant) taking possession of Parcel C. [ref. OR 1000/355; 1000/358; 1000/361]

The division of the 1.7 acre parent parcel of land into three individual building sites was done without the review of Nassau County and in manner which is in direct conflict with the established regulations of Nassau County relating to the division of land for the purpose of creating building sites. [ref. Section 29.07 LDC, Article 9 LDC, Chapter 29 of the Nassau County Code of Ordinances]

Parcel Creation:

The survey created in 2000 at the bequest of the Adams family dividing the 1.7 acre parent parcel into three individual parcels of land contained a note on the face of the survey describing for whom the survey was prepared.

The note states,

"Parcel 'A' [B] 'B' prepared for: Dorot[ly] Adam[ed] and Willi[Ad] Adam[ed] and Mic[he]l R. Adams.

Parcel 'C' is prepared for: Malcolm David Adam

Each quit-claim deed recorded in relation to the division of the subject 1.7 acre parent parcel in 2001 identifies three parties (6 individuals) as the collective grantor(seller);

- Willis and Dorothy Adams
- Michael and Phyllis Adams
- Malcolm and Sharon Adams

Each quit-claim deed was signed by each of the grantors. All six individuals listed above provided signature to each quit-claim deed which created the three individual building sites. [ref. OR 1000/355; 1000/358; 1000/361]



Land Development Code; Article 9:

The genesis of variance request V16-002 is found in the division of the 1.7 acre parent parcel in 2001. The 1.7 acre parcel was divided into three individual building sites in a manner that caused Parcel C to fail to meet the minimum lot width requirement of the Residential Single Family – One (RS-1) zoning district as defined in the Nassau County Land Development Code. As such, Parcel C is deemed nonconforming.

The Nassau County Zoning Code was created via Ordinance 74-33 in 1974. The minimum yard and lot requirements for the RS-1 district have remained unchanged since 1974 and are as follows:

Minimum Yard(setbacks):	Minimum Lot Area:	Minimum Lot Width:
30' Front	10,800sf	90ft
10' Side		
15' Rear		

Parcel C was created with a width of approximately 75 feet[74.44'] in 2000[deed recorded in 2001]. Because Parcel C fails to meet the minimum lot width requirement of the RS-1 zoning district Staff does not possess the administrative authority to issue development permits to Parcel C until the nonconforming status is rectified.

Lot Width is defined in article 32 LDC as, "The mean horizontal distance between the lot lines measured at right angle to it depth"

Yard, front is defined in Article 32 LDC as, "A yard extending across the front of a lot between the side lot lines and being the minimum horizontal distance between the street line and the principal building..."

Land Development Code; Section 29.07 LDC

The language found in Section 29.07 LDC was included verbatim in the Nassau County Zoning Code in 1974 and has survived every amendment and substantial rewrite since.

Section 29.07 LDC states,

"...After the effective date of adoption of the ordinance, no lot or parcel in any district shall be so divided as to create a lot with area or width below the requirements of the ordinance; and no lot or parcel or portion of a lot or parcel shall be used or sold in a manner which diminishes compliance with lot area and width requirements established by the ordinance."

The 1.7 acre parent parcel was divided without review of Nassau County in a manner that was in direct conflict with the established regulatory standard. The result of the division of the 1.7 acre property rendered Parcel C nonconforming. Staff does not have the administrative authority to issue development permits to Parcel C.

It is important to note that the total width of the 1.7 acre parent parcel was approximately 217 feet[north boundary 209.65/south boundary 225.7]. Based upon the survey provided, the parent parcel possessed dimensions capable of creating Parcel C with enough width to meet the dimensional criteria of the respective zoning district. Unfortunately, the established regulations of Nassau County were not consulted prior to the division of the 1.7 acre parent parcel.

The conditional use and variance Board is being asked to issue an after-the-fact variance to allow development of a nonconforming tract of land created in violation of the minimum standards of Nassau County. Albeit the parcel was not created by the Applicant, the Applicant was aware of the circumstance surrounding the parcel prior to purchase.

Lot-of-Record Status:

A Lot of Record is defined by Nassau County as,

"A lot which is part of a subdivision, the map of which has been recorded in the office of the Clerk of the Circuit Court of Nassau County, or a parcel of land the deed of which was recorded in the office of the Clerk of the Circuit Court prior to the adoption of this ordinance [January 23, 2017] which met the minimum Lot, Yard and Frontage requirements of Nassau County at the time the lot was created."

As is evidenced above, the building site did not meet the minimum lot width requirement per Section 9.04 LDC at the time it was created and thus does not meet the definition of a Lot-of-Record.

Bellville Lane

The property is accessed via Bellville Lane, a county maintained prescriptive right-of-way. The majority of Bellville Lane is a single-lane dirt road. In many places the graded portion of the road is of a width insufficient for two vehicles to pass while traveling in opposite directions. The driveway to the subject property, Parcel C, is directly from Bellville Lane at the point where Chester Road becomes Bellville Lane at a 90 degree curve to the west. The exact amount of frontage Parcel C has on Bellville Lane is inconclusive based on the documentation provided and the informal boundary of Bellville Lane.

The linear frontage and access point of the parent parcel (by extension Parcel C) has remained unchanged since at least 1976[most likely longer ref. OR1820/996 and OR 436/421]. What has changed is the access to Parcels A and B. Michael Adams, the benefactor of Parcels A and B, purchased additional properties expanding his land holdings creating additional frontage on Chester Road and established a separate access point further south on Chester Road.

It is important to note that based upon the relationship between the subject property(Parcel C) and Bellville Lane; even if Parcel C had been created at a width of 90 feet the access point and frontage on Bellville Lane would not have been affected. Parcels A and B have a separate access point only because Michael

Adams(owner of Parcels A & B) acquired additional lands allowing the creation of a separate access point on Chester Road. If additional lands had not been acquired, access to Parcels A and B would have been through the original access point on Bellville Lane which is now intended to serve only Parcel C.

Functionality and a Pragmatic Approach

In looking solely at the functional size of Parcel C as a building site and removing all other issues, Parcel C appears to contain adequate land area and be of a composition to construct a single family home. Parcel C does not have access to public water and waste water and thus will require service from private well and an onsite sewage disposal system. As part of application V15-001, the applicant provided a letter from a professional engineer stating that the parcel appears to be of ample size to allow for the construction of a single family home served by private well and septic system. As part of the latest application packet, V16-002, the applicant presented new evidence that during an inspection of the property a septic tank was found. In other words, the property already contains a septic tank.

Given the evidence provided, there appears to be enough suitable land area associated with Parcel C to construct one single family home provided the owner can meet the customary requirements for permitting a new home. The parcel measures approximately 75'x 300' with roughly 75' of frontage on Bells River.

G. Analysis

- A. Show that special conditions and circumstances exists which are peculiar to the land, structure, or building involved and are not applicable to other lands, structures, or buildings in the same zoning district.

The parent parcel measured 1.7 acres when purchased in 1993. The parent parcel was divided into three individual building sites (Parcels A, B, and C) in 2001 with no review by Nassau County and without consultation of the established governing standard. When the individual building sites were created Parcel C did not meet the minimum lot width requirements of the zoning district and thus the division of the 1.7 acre parcel was in direct conflict with Section 29.07 LDC. As a result, Parcel C is a nonconforming parcel of land pursuant to the Nassau County Land Development Code.

The failure to abide by the rules established by Nassau County in relation to the creation of a building sites is not a special condition or circumstance that is peculiar to the subject property. Unfortunately, the requirements of Nassau County were not consulted.

The Conditional Use and Variance Board is being asked to issue an after-the-fact variance. The after-the-fact variance is a request to allow the development of a building site that was created in violation of the minimum standards of Nassau County. Staff finds no special condition or circumstance that is unique to this property as it relates to the creation of Parcel C.

With that said, and in the spirt of equity, the Applicant has provided a full page narrative related to this particular standard of review. The narrative outlines the Applicant's viewpoint and provides evidence the Applicant believes to bolster his position. The Applicant puts forth evidence that a home was previously located on the land-area which currently comprises Parcel

C and the discovery of an existing septic tank on the tract of land. The Applicant couples this information with the fact that the proximate river front is predominately built-out and the applicability to other lands in the immediate area is limited. The Applicant's full narrative is found in the submitted application which is part of the Conditional Use and Variance Board's agenda packet. It is at the discretion of the Conditional Use and Variance Board to determine if sufficient evidence has been provided by the Applicant to support a finding that special circumstance exist which are unique to this property and not applicable to other lands.

- B. Show that special conditions and circumstances do not result from actions of the applicant.

The applicant was not responsible for creating the subject parcel. However, the applicant was present at the 2014 public hearing when the Conditional Use and Variance Board denied application V14-001. The applicant has acknowledged being aware of the nonconforming status of the parcel prior to purchasing the land.

- C. Show that granting the variance will not confer on the applicant any special privilege that is denied by this ordinance to other lands, buildings, or structures in the same zoning district.

The minimum lot width in the RS-1 zoning district is 90'. Planning Staff is charged with administering the Land Development Code. Staff does not have the authority to issue development permits to nonconforming parcels of land unless there exist a specific provision provided for in the Land Development Code. Other parcels of land in Nassau County which fail to meet the definition of a Lot-of-Record and which also do not meet the minimum lot width requirement of the respective zoning district cannot be issued development permits until the deficiencies are remedied. Staff finds the issuance of this variance, based upon the information provided, will confer a special privilege to the Applicant that is denied others in the same zoning district.

The Conditional Use and Variance Board is being asked to issue an after-the-fact variance for the purpose of providing a remedy to a nonconformity that was created by the division of the estate of Willis and Dorothy Adams. The estate was divided in a manner that was inconsistent with the rules as they existed at the time of property division and those rules are still applicable today.

In the spirit of equity, the Applicant has provided a narrative related to this standard of review as part of the application packet. The narrative outlines the Applicant's viewpoint and provides evidence the Applicant believes bolsters his position. It is at the discretion of the Conditional Use and Variance Board to determine if competent substantial evidence has been provided by the Applicant to support a finding that the issuance of this variance will not grant the Applicant special privileges denied others in the same district.

- D. Show that literal interpretation of the provisions of this ordinance would deprive the applicants of rights commonly enjoyed by other properties in the same zoning district under the terms of this ordinance and would place unnecessary and undue hardship on the applicant.

The literal interpretation of the governing regulation will not allow Staff to issue development permits for Parcel C or any other parcel which is not a Lot-of-Record and fails to meet the

minimum lot width requirements of the respective zoning district. As stated above, the estate of Willis and Dorothy Adams was divided in a manner that is inconsistent with the adopted standards of Nassau County and thus Parcel C is rendered nonconforming.

The applicant states,

The Lot has no meaningful use without the granting of a variance. Thus the applicant is unable to build a home on the subject lot. This in itself is an undue hardship on the applicant.

- E. Show that the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.

It is reasonable to conclude that the requested variance is the minimum necessary to allow for the construction of a home. The potential home builder will still be required to meet the building setbacks (minimum yard requirements) for the zoning district and the width of the parcel is not going to be further diminished.

- F. Show that granting of the variance will be in harmony with the general intent and purpose of this ordinance and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Article 32 LDC

The definition of a variance as found in Article 32 LDC is as follows,

Variance: A device which grants a property owner relief from certain provisions of this ordinance, when because of the particular physical surroundings, shape, or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money. ... nor shall a variance be granted because of the presence of nonconformities in the zoning district or in adjoining district.

The need for this variance is not related to the physical surroundings, the shape of the parcel, or any topographical conditions. The genesis of this variance request is related to the fact that the parent parcel was divided into three individual building sites (Parcels A, B, and C) in such a manner that Parcel C did not meet the minimum lot width requirements of the zoning district and thus was in direct conflict with Section 29.07 LDC and Article 9 LDC. As a result, Parcel C is a nonconforming lot pursuant to the Nassau County Land Development Code. With that said, there has been no evidence submitted which definitively demonstrates that the issuance of the variance would be injurious to the area involved or otherwise detrimental to the public welfare.

- G. The granting of the variance will not exceed the density or intensity of land use as designated on the Future Land Use Map 2010 or the underlying land use.

The subject property is designated as Medium Density Residential (MDR) on the Future Land Use Map as adopted with the 2030 Comprehensive Plan of Nassau County. The Medium Density Residential land use category allows for a residential density not to exceed three(3) dwelling units per acre of land. The submitted application is contemplating the construction of one single family home on 0.54 acre. The requested variance will not cause the structure or Lot to exceed

the density or intensity of the land use as designated on the Future Land Use Map 2030 or the underlying land use.

H. Staff Findings

While it is at the discretion of the Conditional Use and Variance Board, after hearing all the evidence and testimony entered into the record, to render a decision to find or not find there is competent substantial evidence, staff finds that application V16-002 fails to demonstrate consistency with the standards of review for the issuance of a variance as defined in Section 3.05(B)(2) of the Nassau County Land Development Code. More specifically, Staff finds the following:

1. The requested variance does not meet the standard of approval set forth in Section 3.05(B)2.a of the Land Development Code for the issuance of a variance. Staff finds there are no special conditions and circumstances which are peculiar to the land, structure, or building involved and further the conditions that exist could be applicable to other lands in the same zoning district. For additional detail related to this finding see the body of this report.
2. The requested variance does not meet the standard of approval set forth in Section 3.05(B)2.c of the Land Development Code for the issuance of a variance. Staff finds that the granting of the requested variance will confer on the applicant special privileges that are denied by the Nassau County Land Development Code to other lands in the same zoning district. For additional detail related to this finding see the body of this report.