

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W side of Lincoln Avenue, 50 feet N		
of c/l of Betz Avenue	*	DEPUTY ZONING
15 th Election District		
7 th Councilmanic District	*	COMMISSIONER
(2203 Lincoln Avenue)		
	*	FOR BALTIMORE COUNTY
Michael and Amanda Warren		
<i>Petitioners</i>	*	Case No. 2009-0113-A

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IN RE: PETITION FOR VARIANCE	*	BEFORE THE
W side of Lincoln Avenue, 100 feet N		
of c/l of Betz Avenue	*	DEPUTY ZONING
15 th Election District		
7 th Councilmanic District	*	COMMISSIONER
(2205 Lincoln Avenue)		
	*	FOR BALTIMORE COUNTY
Michael and Amanda Warren		
<i>Petitioners</i>	*	Case No. 2009-0114-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before this Deputy Zoning Commissioner for consideration of Petitions for Variance filed by Michael and Amanda Warren. In each case number, Petitioners are requesting the following variance relief:

Case No. 2009-0113-A: For the property located at 2203 Lincoln Avenue, the variance request is from Section 1B02.3.c.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a 50 foot lot width in lieu of 55 feet, and to permit a side yard setback for an existing covered patio of 2 feet in lieu of the required 7.5 feet.

Case No. 2009-0114-A: For the property located at 2205 Lincoln Avenue, the variance request is from Section 1B02.3.c.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a 50 foot lot width in lieu of 55 feet.

The subject properties at 2203 and 2205 Lincoln Avenue and the requested relief are more fully described on the site plans which were marked and accepted into evidence as Petitioners' Exhibits 1A and 1B, respectively.

Appearing at the requisite public hearing in support of the variance requests was Petitioner Michael Warren. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the properties that make up 2203 Lincoln Avenue (Case No. 0113-A) and 2205 Lincoln Avenue (Case No. 2009-0114-A) are each rectangular in shape and are zoned D.R.5.5. The properties are located on the east side of Lincoln Avenue, east of the Sparrows Point Industrial Complex, in the southeast area of Baltimore County. The properties are part of the "East Chesapeake Terrace" subdivision. 2203 Lincoln Avenue is identified as Lot 14 and consists of 11,080 square feet, or 0.254 acre, and 2205 Lincoln Avenue is identified as Lot 15 and consists of 11,130 square feet, or 0.256 acre. The lots are each 50 feet wide by approximately 220 feet deep. The property is currently improved with a one-story dwelling consisting of approximately 960 square feet which is situated entirely on Lot 14. There is also a concrete driveway that runs along the south side of Lot 14 and a covered concrete patio attached to the dwelling located at the northeast corner of Lot 14.

Petitioner purchased the property with his wife in May 2005 with the aforementioned improvements. The home's interior consists of three bedrooms, 1½ bathrooms, living room, and kitchen/dining room. A family room is located in an area of the basement that is finished. Petitioners have three children, ages 13, 8, and 2. They realize that they are outgrowing the home, but like their home, the area, and the schools. They wish to eventually build an addition

to their home, however, in order to make it financially feasible, they also desire to establish Lot 15 as a separate, buildable lot so it can be sold if necessary.

Further evidence revealed that the dwelling was constructed on Lot 14 in 1930, and that both Lots 14 and 15 were platted and recorded in the Land Records as part of the "East Chesapeake Terrace" prior to 1930, well before the first set of Zoning Regulations in Baltimore County in 1945. And as is often the case with these older subdivisions, many of the lots are undersized by today's standards and do not meet the current width requirements. As such, Petitioners are in need of variance relief for Lot 15 from the required 55 foot minimum width. Petitioners also seek variance relief for Lot 14 from the required 55 foot minimum width, as well as from the side yard setback requirement of 7.5 feet for their covered patio. These variances for Lot 14 are for Petitioners' current residence in order to legitimize existing conditions.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated November 25, 2008 which indicate that there appear to be several existing undersized lots in the neighborhood. As such, the Planning Office does not oppose Petitioners' request. Comments were received from the Department of Environmental Protection and Resource Management (DEPRM) dated November 20, 2008 which indicate the property must comply with the Chesapeake Bay Critical Area Regulations. The property is located within the Limited Development Area of the CBCA. The maximum permitted lot coverage is 31.25% which equals 3,478 square feet. The 25% threshold is 2,782 square feet. Mitigation is required between 25%-31.25%. There is also a 15% afforestation requirement for the lot that must be met on-site. However, in response to the DEPRM comment, Petitioner indicated that the property is not in the Chesapeake Bay Critical

Area. The undersigned informed Petitioner that this issue would need to be addressed with DEPRM in order to determine if DEPRM's comments are applicable.

Considering all the testimony and evidence presented, I am persuaded to grant the variance relief as to the minimum lot widths. Without variance relief, Lot 14 would be in violation of the current regulations and Lot 15 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, Petitioners are entitled to their variances as they have 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 of the B.C.Z.R. for relief to be granted. In addition, Petitioner indicates that any future dwelling on Lot 15 will be constructed and situated in a manner consistent with other houses in the community. Building elevations will need to be submitted to the Office of Planning for approval prior to the issuance of a building permit. The only deficiency in both of these instances is the lot width, which is five feet shy of the required 55 feet. As to the side yard setback variance, this is to legitimize an existing condition. Petitioner indicated the covered patio has been in existence since before he and his wife purchased the property and there are other similar structures attached to a number of homes in the surrounding neighborhood. Hence, I do not find any negative impacts to the public health, safety and general welfare associated with the covered patio and shall grant this variance as well.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered, I find that Petitioners' variance requests should be granted.

THEREFORE, IT IS ORDERED this 14th day of January, 2009 by this Deputy Zoning Commissioner, that variance relief for properties set forth as follows:

Case No. 2009-0113-A: For the property located at 2203 Lincoln Avenue, the variance request from Section 1B02.3.c.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a 50 foot lot width in lieu of 55 feet, and to permit a side yard setback for an existing covered patio of 2 feet in lieu of the required 7.5 feet be and are hereby GRANTED.

Case No. 2009-0114-A: For the property located at 2205 Lincoln Avenue, the variance request from Section 1B02.3.c.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a 50 foot lot width in lieu of 55 feet be and is hereby GRANTED.

Both properties are subject, however, to the following conditions precedent to the relief granted herein:

1. Petitioners may apply for any applicable building permits 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 has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners or any subsequent owners of Lot 15 shall submit building elevations to the Office of Planning for review and approval prior to the issuance of any building permit. A proposed dwelling on Lot 15 shall be compatible in size, exterior building materials, color and architectural detail as that of the existing dwellings in the area.
3. For Lots 14 and 15, landscaping shall be provided along the public road if consistent with the existing streetscape.

4. If it is determined that Lots 14 and 15 are within the Chesapeake Bay Critical Area (CBCA), Petitioners and any subsequent owners are advised that development of the properties must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004 and other Sections of the Baltimore County Code).
5. If within the CBCA, it should also be noted that the properties are located within the Limited Development Area of the CBCA. The maximum permitted lot coverage is 31.25% which equals 3,478 square feet. The 25% threshold is 2,782 square feet. Mitigation is required between 25%-31.25%. There is also a 15% afforestation requirement for the lot that must be met on-site.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz