

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
W/S Beach Avenue, 470' N of c/line of		
Rockaway Beach Avenue	*	ZONING COMMISSIONER
<b>(2405 Beach Avenue)</b>		
15 <sup>th</sup> Election District	*	OF
5 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
Samuel W. House, et ux		
<i>Petitioners</i>	*	<b>Case No. 2009-0334-A</b>

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**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, Samuel W. House, and his wife, Eva A. House. The Petitioners request variance relief from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a new dwelling with a minimum sum of side yard widths of 22 feet in lieu of the required 25 feet, and to permit the replacement of an existing dwelling with a larger area pursuant to Section 305 of the B.C.Z.R.<sup>1</sup> The subject property and requested relief are more particularly described on the amended 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 were Patrick M. O’Keefe, a consultant assisting the property owner through the permitting process, and Charles Jones, of Freestate General Contractors, the Petitioners’ builder. There were no Protestants or other interested persons present.

Testimony and evidence offered disclosed that the property under consideration is a

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<sup>1</sup> The subject property has 50 feet of width on Beach Avenue, is 152 feet deep, and has 50 feet of frontage at the rip rap bulkhead on Sue Creek. The Zoning Commissioner’s Policy Manual (Z.C.P.M.) Sections 400.1A and 400.2A provides a determination of what constitutes the front yard on waterfront lots based on the orientation of the houses and accessory buildings. In most cases, waterfront lots refer to the front of the structure as facing the water. In this case, it is noted that the Zoning Review Office and the Petitioner have the front of the home facing Sue Creek and the rear facing Beach Avenue.

rectangular shaped waterfront parcel identified as Lot 21 in the subdivision of Turkey Point Farm located on the Sue Creek on the west side of Beach Avenue in the Rockaway Beach area of eastern Baltimore County. The property contains a gross area of 7,257 square feet, zoned D.R.3.5 and improved with a small (23' wide x 40' deep) one-story dwelling featuring a detached garage and wooden pier. As is often the case with older subdivisions, Turkey Point Farm was laid out many years ago, well prior to the adoption of any zoning regulations in Baltimore County. Thus, many of the lots in the neighborhood are undersized and do not meet current area and width requirements. In this regard, the subject property is approximately 50 feet wide and 150 feet deep and as previously noted contains a gross area of 7,257 feet. *See* the subdivision plat recorded in 1915 received as Petitioners' Exhibit 4 illustrating 72 similar sized lots of record. Current D.R.3.5 regulations require a *minimum area of 10,000 square feet, and a minimum width of 70 feet.* Thus the subject lot, while vested, is undersized by today's development standards.

Testimony indicated that the Petitioners have owned the subject property since 2008 and had used it as their home. As shown on the site plan, the Houses' are desirous of removing the existing dwelling built in 1939 and propose to construct a new one-story dwelling 28' wide x 51'-9" deep with a front open deck and in the process realigning or squaring up its orientation on the lot. *See* Petitioners' Exhibit 1 highlighting the location of the proposed structure. The dwelling is to be centered on the lot consistent with other homes in the area and will have the same side yard setbacks as the existing home so as to provide setback distances consistent with other homes on adjacent properties. The building elevations will be submitted to the Office of Planning for review and approval prior to the Petitioners being granted a building permit. The Office of Planning will determine the compatibility of size, exterior building materials, color and

architectural detail. I will leave it to that office to determine that the proposed home is consistent with the existing dwellings in the area. In support of the request, the Houses' have neighbors who have no objections and support the proposal. In essence, the new home will be 5' wider and 11' longer than the existing structure with a front porch. In view of the narrow configuration and size of the lot, compliance with the regulations is not practical or possible. Additionally, the property is located in the Limited Development Area (LDA) of the Chesapeake Bay Critical Area (CBCA) which requires that the proposed development must comply with these regulations and, in particular, the impervious surfaces which are limited to 25% of the property. Thus, variance relief is requested in order to comply with the spirit and intent of these regulations.

Based upon the testimony and evidence presented, I am persuaded to grant the requested relief. In my judgment, the Petitioners have satisfied the requirements of Sections 305 and 307 of the B.C.Z.R. and *Cromwell v. Ward*, 102 Md. App. 691 (1995). In considering the issue presented, there are two Sections of the B.C.Z.R. that are relevant. The first is Section 305, entitled "Replacement of Destroyed or Damaged Dwellings." That Section provides that in the event of a complete or partial loss by fire, a dwelling that does not comply with the height or area requirements of the zone in which it is located can be restored, provided that the area or height deficiencies of the dwelling before the fire are not increased in any respect. Secondly, the language set out in Section 104.2 of the B.C.Z.R. is applicable. Section 104 of the B.C.Z.R. governs nonconforming uses. A nonconforming use is a use that is illegal under the current regulations, however is "grandfathered" and therefore may remain.

In this case, the subject property and original dwelling do not comply with the zoning requirements for the D.R.3.5 zone. The lot itself is undersized and the original house had insufficient setbacks. Nonetheless, the Petitioners are eligible to reconstruct a dwelling on the lot, given the collective language of Sections 305 and 104.2 of the B.C.Z.R. The new dwelling

will essentially occupy the same footprint as the old structure. The language in Section 305 of the B.C.Z.R. specifically exempts the new dwelling from strict compliance with height and area regulations. Moreover, the language in Section 104.2 of the B.C.Z.R. allows a nonconforming use to continue. The variance in this case is driven by the configuration and size of the lot. Moreover, this property is served by public water and public sewer, which has been made available in the area. Strict compliance with the regulations would cause a practical difficulty upon the Petitioners in that a reasonable use of the land would not be permitted. Finally, the neighbors are not opposed to the proposal. Thus, I find that relief can be granted without detrimental impact to the adjacent properties. In this regard, it is noted that many other houses in the community are built on similarly sized lots. However, in granting the relief, the Petitioners are reminded that they need to comply with the CBCA regulations enforced by the Department of Environmental Protection and Resource Management (DEPRM).

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 2<sup>nd</sup> day of September 2009 that the Petition for Variance seeking relief from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a new dwelling with a minimum sum of side yard widths of 22 feet in lieu of the required 25 feet, and to permit the replacement of an existing dwelling with a larger area pursuant to Section 305 of the B.C.Z.R, in accordance with Petitioners' Exhibit 1, be and the same is hereby GRANTED; subject to the following:

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 thirty (30) day appeal period

2. Prior to the issuance of any permits, the Petitioners shall submit building elevation drawings of the proposed dwelling to the Office of Planning for review and approval to insure compatibility with the neighborhood.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code (B.C.C.).

WJW:dlw

\_\_\_\_\_SIGNED\_\_\_\_\_  
WILLIAM J. WISEMAN, III  
Zoning Commissioner for  
Baltimore County