

IN RE: <b>PETITION FOR VARIANCE</b>	*	BEFORE THE
W/S Sue Grove Road, 2,150' S of		
Turkey Point Road	*	ZONING COMMISSIONER
<b>(826 Sue Grove Road)</b>		
15 <sup>th</sup> Election District	*	OF
6 <sup>th</sup> Council District		
	*	BALTIMORE COUNTY
John Edward Hauser, Jr., et al		
Petitioners	*	<b>Case No. 2011-0120-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, John E. Hauser and Dorothy Burnette.<sup>1</sup> The Petitioners seek variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing dwelling addition with a side yard setback of zero (0) feet in lieu of the minimum required ten (10) feet, and a sum of side yards of eight (8) feet in lieu of the minimum required 25 feet, and a rear yard setback of zero (0) feet in lieu of the required 30 feet. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Fred Hauser, the property owner's son; his friend, Robert Pytrykow, and Geoffrey C. Schultz, President of McKee & Associates, Inc., the consultant who prepared the site plan and is assisting the Petitioners in this matter. Appearing as a Protestant in the matter is the adjacent neighbor, Thomas L. Hollenshade (828 Sue Grove Road), who voiced strong opposition to the Petitioners' request. He presented as experts in land use, Thomas A. Church, a professional engineer, and John

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<sup>1</sup> Fred Hauser, the son of John Hauser, appeared at the hearing and informed the undersigned Commissioner that since the filing of the Petition for Variance on September 28, 2010 his father departed this world on October 14, 2010. He stated his father had tasked him with getting this matter resolved and that his father's friend, Dorothy Burnette, has not resided at the property for some time and her whereabouts are unknown.

Sullivan, a former employee with Baltimore County's Department of Permits and Development Management.

An examination of the site plan shows that the subject property is an irregularly shaped waterfront parcel located on the west side of Sue Grove Road directly across from Riverside Drive in eastern Baltimore County. The property is also known as Lot 58 on the residential subdivision known as SUEGROVE, and contains a gross area of 14,000 square feet, or 0.321 acres, more or less, zoned D.R.3.5. The property is improved with a one-story, single-family dwelling, deck, pier extending into the Sue Creek and a 20'-8" wide x 12'-1" deep addition, which is the subject of the instant request. Fred Hauser's father has owned the property since 1986 and built the home in 1997. The addition is actually elevated at the rear of the existing dwelling and was constructed to provide John Hauser with extra bedroom space and a water view of the Sue Creek. He had been in poor health and unable to walk for some time. Fred Hauser stated that he moved into the house to care for his father and is currently residing on the property.

In the fall of 2009, the Petitioners, for the reasons outlined above, decided to construct the addition. In this regard, Mr. Hauser wanted to expand the bedroom to be of sufficient size to accommodate his son's ability to stay with him as his diabetes and inability to walk was rapidly deteriorating. They commenced excavating and pouring footings, building a deck, fabricating roof trusses, and enclosing the structure. Little did the Petitioners realize that the proposed addition would become complicated by Section 1B02.3.C.1 (Chart) of the B.C.Z.R., which outlines the development standards for small lots.

The Petitioners' nightmare began in January 2010 when the Department of Permits and Development Management (DPDM) received written inquiries questioning the deck's enclosure

without building permits. Code Enforcement Officer Claude Profili visited the site on January 29, 2010 and issued a “stop work order” informing Petitioners that a valid building permit would be required before proceeding. In any event, subsequent to receiving the stop work order, Fred Hauser or his contractor proceeded to enclose the outside of the structure to protect the investment from inclement weather. At this point, the Petitioners had paid substantial sums of money for the addition’s construction.

The Petitioner’s son now comes before me seeking relief as set forth above to allow completion of the structure. He testified at length as to the practical difficulty and unreasonable hardship he had endured since receiving the stop work order, which has left him in an untenable position. *See* Orders issued in Case No. CO-0072931 by Margaret Z. Ferguson, Baltimore County Hearing Officer, dated April 8 and July 2, 2010 which are incorporated by reference herein.

Mr. Hauser testified that he placed the addition at its present location and at its current height for the reasons indicated above and was not aware of any County or community restrictions that would prevent him from doing so. He submitted photographs and referred to a prior Order in Case No. 97-585-A issued by then Deputy Zoning Commissioner Timothy M. Kotroco allowing for a side yard setback of 4 feet and a finding that the property was unique in a zoning sense. Mr. Schultz indicates that this tends to support his client’s contention.

As noted above, Mr. Hollenshade and the Office of Planning, through its Zoning Advisory Committee (ZAC) comment, dated October 19, 2010, are in opposition to the request. Mr. Hollenshade presented photographs (Protestants Exhibit 1A and 1B) and testified that he found the addition offensive and out of rhythm with other structures in the immediate area. This has impacted adversely his property value and severely hindered interest in the sale of his

property that has been on the market since October 2009. He believes that the Petitioners should be required to remove the structure in accordance with the regulations. Mr. Hollenshade believes that the Petitioners are the authors of their own misfortune since they built the structure without obtaining building permits and then failed to stop construction efforts after the stop work order was issued.

Variance relief can be granted only if the requirements contained in Section 307 of the B.C.Z.R. are met. This Section states that the Zoning Commissioner may grant variances;

*... only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship.* Variances are not favored under the law and presumed to be in conflict with the

regulations. As stated in *Cromwell v. Ward*, 102 Md. App. 691, 703 (1995):

*The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.*

After due consideration of all of the testimony and evidence presented, I find that the Petitioners property is substantially similar to other properties as to size, shape, topography and water orientation. As such, it does not meet the requirements for a finding of uniqueness (as pertains to the subject addition) as set forth in *Cromwell*. I cannot decide this case based on “extenuating circumstances.” Having determined that no uniqueness exists as to the Petitioners’ need to build the addition at this particular location on the property, I must therefore deny the variance requested by the Petitioners.

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 denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20<sup>th</sup> day of November 2010 that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing dwelling addition with a side yard setback of zero (0) feet in lieu of the minimum required ten (10) feet, and a sum of side yards of eight (8) feet in lieu of the minimum required 25 feet, and a rear yard setback of zero (0) feet in lieu of the required 30 feet, in accordance with Petitioners' Exhibit 1, be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petitioner shall have 90 days from the date of this Order to remove the 21' x 12' addition and deck from the rear of the home so as to be in compliance with the zoning regulations.

Any appeal of this decision shall be taken in accordance with Baltimore County Code Section 32-3-401.

WJW:dlw

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