

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
SE corner of Lodge Forest Drive and	*	ZONING COMMISSIONER
North Point Creek Road		
<b>(2135 Lodge Forest Drive)</b>		
15 <sup>th</sup> Election District	*	OF
7 <sup>th</sup> Councilmanic District	*	BALTIMORE COUNTY
Timothy G. and Janet Lockemy	*	<b>CASE NO. 2011-0157-A</b>
<i>Petitioner</i>		
* * * * *		

**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, Janet Lockemy and her son, Timothy Glenn Lockemy<sup>1</sup>. Petitioners request variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed dwelling on a lot 50 feet wide in lieu of the required 55 feet and a side street setback of 12.5 feet in lieu of the required 25 feet. The subject property and requested relief are more particularly shown on the revised 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 was Pattianne Smith, a Professional Land Surveyor who prepared the site plan and is assisting the Petitioners. There were no Protestants or other interested persons present.

Testimony and evidence offered disclosed that the subject property, known as 2135 Lodge Forest Drive is also known as Lot 1045 of “Lodge Forest” (an older subdivision recorded in 1929) and is 50 feet wide x 200 feet deep, consisting in area(s) of 10,000 square feet, zoned D.R. 5.5 and located within the Limited Development Area of the Chesapeake Bay Critical Area (CBCA) in

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<sup>1</sup> Rufus G. Lockemy and his wife, Janet Lockemy, have owned 2133 Lodge Forest Drive for many years. This property is improved with a 1½ story single family dwelling built in 1947 and has a tax account no. 1502005000. Janet Lockemy desires to deed the vacant and unimproved subject lot (tax no. 1516150623) to her son in order that he build a new 2 story dwelling for himself and his wife.

Edgemere. The owners seek the necessary zoning approval to construct a new dwelling on Lot 1045 in accordance with Petitioners' Exhibit 1 that will be compatible in both size and architectural detail with those other homes existing in the area. While in the CBCA, the property is not water view; however, not far from the North Point Creek. The subject variance before me involves a corner lot defined in Section 101 of the B.C.Z.R. as "A lot abutting on and at the intersection of two or more streets". The property located at the corner of Lodge Forest Drive and North Point Creek Road is unimproved and maintained by Rufus and Janet Lockemy who reside on adjacent lot 1046. The plan shows a proposed dwelling located centrally on the lot (Lot 1045) and facing Lodge Forest Drive. The home will be setback 48 feet from Lodge Forest Drive, maintain side yard setbacks of 10 feet (south side) and 12.5 feet (north side) adjacent to North Point Creek Road. Access will be by utilizing an existing driveway off of North Point Creek Road. A privacy fence will be erected between Lots 1046 and 1045. Access to Lot 1045 is from Lodge Forest Drive.

As outlined above, Petitioners need variance relief because although the property meets minimum area requirements, it does not meet the 55 foot minimum width requirement. In addition, in order to erect a 27.5 feet wide dwelling, Petitioners are in need of a variance for a side street setback of 12.5 feet in lieu of the required 25 feet. Ms. Smith indicated that the property is a unique parcel in that it is a corner lot and is constrained by the fact that the side yard facing North Point Creek Road must nevertheless conform to the front yard setback requirement. She indicated that similar relief has been granted for other corner lots and that most all of the lots on the north side of North Point Creek Road are only 47.5 feet wide. She provided as Exhibit 2 the Order issued in Case No. 89-82-A for the property located on the opposite side of the street at 2201 Lodge Forest Road. In that case, Zoning Commissioner J. Robert Hanes granted a side yard

setback of 3 feet for Lot 799A and permitted a lot width of 47.5 feet in lieu of the required 55 feet for a new dwelling.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments received from the Office of Planning dated November 15, 2010 recommended approval and indicated that the proposed home would be compatible with neighboring houses in the area. The comment further indicates that building drawings showing the front and side street elevations shall be submitted for review and approval prior to issuance of any building permit. Comments received from the Department of Environmental Protection and Resource Management (DEPRM), dated December 10, 2010, indicates that development of the property must comply with Chesapeake Bay Critical Area (CBCA) regulations.

Section 307 of the B.C.Z.R. contains the standards for the grant of variance relief. This section has been interpreted by the appellate courts of this State, most notably in *Cromwell v. Ward*, 102 Md. App. 691 (1995). The fact that these lots were laid out prior to the adoption of the first set of zoning regulations (1945) is a significant factor.

Second, *Cromwell* requires a finding of practical difficulty. The D.R. 5.5 zoning regulations permit, by right, the development of the subject property with a single-family dwelling. These regulations impose a number of requirements for the construction of a home. In this case, nearly all of those requirements are met. The strict compliance of the zoning regulations would result in practical difficulty or unreasonable hardship in this case. In short, strict compliance would prevent Petitioners from erecting a residential dwelling that is compatible with others in the neighborhood and would essentially render an otherwise desirable property useless and unbuildable. Finally, these variances can be granted in strict harmony with the spirit and

intent of the regulations, and in such a manner as to grant relief without injury to public health, safety and general welfare.

Pursuant to the advertisement, posting of the property and public hearing on the 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 16<sup>th</sup> day of December, 2010 that the Petition for Variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed dwelling on a lot 50 feet wide in lieu of the required 55 feet and a side street setback of 12.5 feet (north side) in lieu of the required 25 feet, in accordance with Petitioners’ Exhibit 1, be and is hereby GRANTED, subject to the following conditions:

- 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 her 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 Zoning Advisory Committee (ZAC) comment submitted by the Department of Environmental Protection and Resource Management (DEPRM) relative to the Chesapeake Bay Critical Area regulations and all other appropriate environmental, floodplain and B.O.C.A regulations relative to the protection of water quality, streams, wetlands and floodplains. A copy of this comment, dated December 10, 2010, is attached hereto and are made a part hereof.
- 3) Prior to the issuance of any building permits, the Petitioners shall submit building elevation drawings to the Office of Planning for review and approval. The proposed dwelling shall be constructed substantially in accordance with the elevation drawings approved by the Office of Planning.
- 4) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

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

WJW:pz

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