

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/Side Stumpfs Road, 1,500' N of	*	ZONING COMMISSIONER
Blackhead Road	*	
(1210 Stumpfs Road)	*	OF
	*	
15 th Election District	*	BALTIMORE COUNTY
6 th Council District	*	
	*	
Phillip J. Orem, et ux	*	Case No. 2010-0208-A
Petitioners		

* * * * *

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, Phillip J. Orem, and his wife, Helen J. Orem. The Petitioners seek relief from Sections 1A01.3.B.1 & 3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a single-family (replacement) dwelling on a lot less than the required one acre (R.C.2 – 0.3972 acre) side yard setbacks of 22 feet and 24 feet in lieu of the required 35 feet and a setback to centerline of right-of-way (paving) of 54 feet in lieu of the required 75 feet. The subject property and requested relief are more particularly described on the site plan which was accepted into evidence and marked as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the request were Helen J. Orem, property owner, Bernadette L. Moskunas with Site Rite Surveying, Inc., the consultant who prepared the site plan for this property and assisting the Petitioners through the process, and Thomas H. Ernst, R.S., with Ernst Environmental Services, Inc., a registered sanitarian, helping the Petitioners with the environmental and groundwater constraints and well and septic system location(s). It is to be noted that a letter of support for this replacement home was received and signed by 24 residents in the community, including the President of the Bird River Beach

Community Association, received as Petitioners' Exhibit 5. There were no Protestants or other interested persons present.

The subject waterfront property consists of two (2) lots identified on Maryland Department of Assessments and Taxation Map 83 as Lots 14 and 15 of the Bird River View subdivision in Middle River. The tract forms a rectangular shaped parcel located on the north side of Stumpfs Road, west of Blackhead Road and fronts on the Bird River. The property contains a combined area of 19,960 square feet (0.458 acres), split-zoned R.C.2 (17,260 square feet) with a strip of R.C.50 (2,700 square feet) along the southern property line and improved with a modest one-story residential structure built in 1952. As is often the case with older subdivisions, Bird River View was laid out many years ago, well prior to the adoption of the zoning regulations in Baltimore County. Thus, many of the lots in the neighborhood are undersized and do not meet current area and width requirements. The GIS Services Map, submitted as Petitioners' Exhibit 3, shows the pattern of development with many of the waterfront homes on 50 foot wide lots. As illustrated on the site plan, the subject property has 100 feet of road access on the existing paved road¹ and is 190 feet deep. The property has been in the Petitioners' family's possession since 1963 and used as their summer vacation home.² As shown on the site plan, they are now desirous of redeveloping the property with a one-story ranch-style retirement home (52' wide x 24' deep) removing or razing the existing dwelling which is only setback 40 feet from the existing shoreline and placing the new home further back on the property at a distance of 87 feet from the shoreline more in keeping with the Chesapeake Bay Critical Area (CBCA) regulations. They will also improve the property's overall

¹ Stumpfs Road is not located within the 16-foot right-of-way called for on the plat. It is actually within the Petitioners property boundaries and this fact drives the need for the setback of the centerline of the roads paving. If Stumpfs Road would have been built within the platted right-of-way, no variance from B.C.Z.R. Section 1A01.3.B.3 would be necessary or required.

² Helen Orem obtained the property and improvements from her father's, William H. Deering, estate in 2009.

appearance by removing the existing decks and metal shed currently located on Lots 14 and 15. In that the R.C.2 development regulations require a minimum 35-foot setback to any side yard property line, the requested variance relief is necessary. In support of the request, testimony indicated that the proposed dwelling would be consistent with other homes in the community and feature similar setbacks. Ms. Moskunas points out that while the R.C.2 zoning classification prohibits the creation of a lot having an area less than one (1) acre (B.C.Z.R. Section 1A01.3.B.2), these lots have been lots of record and recorded in Plat Book 8, Folio 84, since 1927. Further, she indicates that this is to be considered a larger lot in the community where many of the existing homes were built on 50-foot wide lots. Thus, she submits that the relief requested is appropriate and is consistent with the neighborhood. Mr. Ernst indicated that he has been working with the Department of Environmental Protection and Resource Management (DEPRM) in regard to the groundwater and septic system issues that result from the property's location within the Limited Development Area (LDA) regulations of the CBCA and Buffer area. See Environmental submittals marked as Petitioner's Exhibit 4. These environmental regulations govern the location of the replacement dwelling. In order to obtain approval of the Environmental Impact Review and Groundwater Management Sections of DEPRM, zoning relief is necessary.

After due consideration of the testimony and evidence presented, I find that the proposed home in the location depicted on Petitioners' Exhibit 1 is in keeping with the homes in the area and meets the spirit and intent of Section 307 and *Cromwell v. Ward*, 102 Md. App. 691 (1995) for variance relief to be granted. As noted above, the subject property has been a lot of record since 1927, well prior to the adoption of the zoning regulations in 1945 and the R.C.2 zoning regulations in 1979. It is clear that strict compliance with the regulations would result in

practical difficulty for the Petitioners and prevent the further improvements of the property for a permitted purpose. Additionally, and as corroborated by the Real Property Data Sheet, a residential structure has been located on the property since 1952. Moreover, there were no adverse Zoning Advisory Committee (ZAC) comments submitted by any County reviewing agency. Thus, I find that relief can be granted without detrimental impact to the health, safety, or general welfare of the surrounding locale. However, due to the property's close proximity to the Bird River, the proposed improvements must comply with Chesapeake Bay Critical Area (CBCA) regulations as set forth in the attached ZAC comments submitted by the Department of Environmental Protection and Resource Management (DEPRM) and the Bureau of Development Plans Review.

Pursuant to the advertisement, posting of the property, public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 29th day of March 2010, that the Petition for Variance seeking relief from Sections 1A01.3.B.1 & 3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a single-family (replacement) dwelling on a lot less than the required one acre (R.C.2 – 0.3972 acre) with side yard setbacks of 22 feet (west side) and 24 feet (east side) in lieu of the required 35 feet and a setback to the centerline of the right-of-way (paving) of 54 feet in lieu of the required 75 feet, in accordance with Petitioners' Exhibit 1, be and is hereby granted subject to the following conditions:

1. The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is made aware that that proceeding at this time is at his 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) comments submitted by the Department of Environmental Protection and Resource Management (DEPRM) and the Development Plans Review (DPR) relative to the Chesapeake Bay Critical Area (CBCA) regulations and all other appropriate environmental, floodplain and B.O.C.A. regulations relative to the protection of water quality, streams, wetlands and floodplains. Copies of those comments, dated March 9, 2010 and February 12 2010, respectively, have been attached hereto and are made a part hereof.

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

WJW:dlw

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
of Baltimore County