

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(6023 Lorely Beach Road)</b>		
11 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
6 <sup>th</sup> Council District		
David M. & Rose M. Kausch	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	<b>CASE NO. 2016-0083-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of David and Rose Kausch, owners of the subject property (“Petitioners”). Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §1A01.3 (B)(3): (1) to permit a proposed new house on a previously improved 50 ft. wide lot with a side setback of 10.3 ft. and a deck in the side yard with a setback of 6.3 ft. in lieu of the permitted 35 ft. and 26.5 ft. respectively; and (2) to permit an existing accessory structure screened/deck/porch in the front yard with a setback of 1 ft. 1 in. in lieu of the permitted rear yard and 2ft. 5 in. A site plan was marked as Petitioners’ Exhibit 1.

Owners David and Rose Kausch and professional surveyor Keith Heindel, whose firm prepared the site plan, appeared in support of the petition. Jeffrey H. Gray, Esq., represented the Petitioners. The Petition was advertised and posted as required by the B.C.Z.R. No Protestants or interested citizens attended the hearing. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Environmental Protection and Sustainability (DEPS). That agency noted Petitioners must comply with the Critical Area regulations prior to issuance of permits.

The subject property is approximately 12,997 square feet and is zoned RC 2. The property

is improved with a small single family dwelling constructed in 1952. Petitioners stated the property is in extremely poor condition and has mold contamination that cannot be remediated. Petitioners propose to raze the structure and in its place construct a new single family dwelling.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

Petitioners have met this test. The lot is narrow (50 ft.) and deep (approximately 265 ft.), and is shown on a plat recorded long before the adoption of the B.C.Z.R. As such it is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they will be unable to construct the single family dwelling as proposed. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of Baltimore County and/or community opposition.

THEREFORE, IT IS ORDERED, this 20<sup>th</sup> day of November, 2015, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (“B.C.Z.R.”) §1A01.3 (B)(3): (1) to permit a proposed new house on a previously improved 50 ft. wide lot with a side setback of 10.3 ft. and a deck in the side yard with a setback of 6.3 ft. in lieu of the permitted 35 ft. and 26.5 ft. respectively; and (2) to permit an existing accessory structure screened/deck/porch in the front yard with a setback of 1 ft. 1 in. in lieu of the permitted rear yard and 2ft. 5 in., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Prior to issuance of permits Petitioners must comply with the Critical Area Regulations.

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

JEB:sln

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County