7/14

IN RE: PETITION FOR VARIANCE SW/S of Chesapeake Road, 165 ft. W centerline of Susquehanna Road 15th Election District 6th Councilmanic District (**7355 Chesapeake Road**) Adele Stenzel, *Legal **Owner*** *Petitioner*	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 05-581-A
		and
PETITION FOR VARIANCE SW/S of Chesapeake Road, 115 ft. W centerline of Susquehanna Road 15th Election District 6th Councilmanic District (**7357 Chesapeake Road**) Blue Water Properties, LLC, By: Jimmy Harris, Member *Petitioner*	*	CASE NO. 05-582-A

* * * * * * * * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before this Deputy Zoning Commissioner as Petitions for Variance filed by the legal owners of the subject properties, Adele Stenzel and Blue Water Properties, LLC, by Jimmy Harris.

In the first case (#05-581-A), the Petitioner is requesting variance relief for property located at 7355 Chesapeake Road in the eastern area of Baltimore County. The variance request is from Sections 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing single-family dwelling with a minimum lot width of 50 ft. in lieu of the required 55 ft.

In the companion case (#05-582-A), the Petitioner is requesting variance relief for an adjoining vacant lot located at 7357 Chesapeake Road in the eastern area of Baltimore County. The variance request is from Sections 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a minimum lot width at the front building line of 50 ft. in lieu of the required 55 ft.

The properties were posted with Notice of Hearing on June 14, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notices of Zoning hearing were published in "The Jeffersonian" newspaper on June 14, 2005 to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 307 of the B.C.Z.R. – ***Variances***.

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations 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 for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to the public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: ZAC comments were received from the Bureau of Development Plans Review dated May 25, 2005, copies of which are attached hereto and made a part hereof. In addition, ZAC comments were received from the Office of Planning dated June 6, 2005 recommending that certain conditions must apply if the requests are granted, copies of which are attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the variance requests was Vince Moskunas, from Site Right Surveying Inc., for the Petitioners. No Protestants or citizens appeared at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

These are companion cases and all testimony and evidence presented is applicable to both cases. Mr. Moskunas proffered that these cases involve side by side properties in the Oliver Beach area. Case No. 05-581 involves Lot 234 in the Plat of Sections A & B of the "Oliver Beach" subdivision, which was recorded in the Land Records for Baltimore County in 1940. See Exhibit 2. This lot is improved by an existing home which Mr. Moskunas indicated was constructed in 1949.

Case No. 05-582 involves Lot 233 in the same subdivision and is presently vacant save for the storage of a small boat as shown on Exhibit 5E. The Petitioners proposes to build a new single-family dwelling on this lot, which meets all regulations as to size and setbacks. Both lots are 50 ft. wide by 200 ft. long. Each is owned by the Petitioners and zoned DR 5.5 which requires a 55 ft. minimum lot width. Thus the request for variance. Mr. Moskunas opined that both lots meet the minimum lot size of 6000 sq. ft. and thus if the new home was built on the vacant lot there would not be an increase in density of the area more than otherwise allowed. He further indicated that allowing the variances would not violate the spirit and intent of the DR 5.5 regulations, nor would it adversely affect the neighborhood. In support of this contention, he presented photographs of the area (Exhibit 5) and the GIS aerial (Exhibit 7) which he contends shows that the proposed new home would not change the pattern of development of the neighborhood. He agreed to comply with the ZAC comments from the Office of Planning.

Findings of Fact and Conclusions of Law

Zoning Merger Doctrine

Recently the Court of Appeals applied its doctrine of zoning merger to adjacent lots in the case of *Remes v Montgomery County*, 387 Md 52, 874 A2d 470 (2005). This case cites a prior Court of Appeals case, *Friends of the Ridge v Baltimore Gas and Electric Company*, 352 Md 645, 724 A2d 34 (1999) which announced the doctrine of zoning merger in Maryland. By this doctrine, the Court indicated that when adjacent properties are held in common ownership and these

properties were used by the owner as one, then the doctrine of zoning merger requires that the properties be treated as one for zoning purposes. Consequently having become one, no internal variances may be granted on the individual properties and the combined tract must go through the subdivision process if the owner wants to build a structure on one of the lots.

In this case the evidence indicates that these two lots were not used as one by the owner and no zoning merger occurred. Mr. Moskunas presented records from the Department of Assessments and Taxation that indicated lot 233 (the vacant lot) was purchased by the Petitioners in 1973 while the lot with the existing home was purchased in 1985. Each lot has its own tax account number and the Petitioner paid real estate taxes on separate perhaps buildable lots. The only evidence of common use is the fact that the Petitioner parked a boat and trailer on the vacant lot as shown by Petitioner's Exhibit 5. I find this *de minimus* evidence of common use. This is not waterfront property with common bulkhead or other facilities. These were purchased as separate lots and have remained so.

Zoning Issues

I find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. These lots were part of a subdivision that was recorded in the Land Records of Baltimore County in 1940 much before the DR zoning regulations were imposed. As such, I find that the imposition of the zoning regulations impact these lots differently than lots in the area laid out in accord with the DR regulations. I also find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. Obviously the new home could not be built. I find that no increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of granting these variances. As Mr. Moskunas points out, the lots are substantially above the minimum size of lots for DR 5.5 zones.

I further find that these variances can be granted in strict harmony with the spirit and intent of the regulations, and in a manner as to grant relief without injury to the public health, safety and general welfare. Thus, a new home at this location will not change the character of the neighborhood. Exhibit 7 shows that two lots located to the east and west are developed as one house for each 50 ft. lot. I will admit that the pattern north of Chesapeake Road is one house on several lots. However, different patterns, even across a road, are not unusual in this neighborhood. On balance, I do not believe that adding a home on the south side of the road will change the privacy and enjoyment of the adjacent homes.

Finally, as noted at the hearing, I see that no request for variance was requested for the side yard setbacks of the existing home. Clearly the existing home does not meet the side yard setback requirements of the DR 5.5 zone. Presumably the Petitioner was content to rely on the nonconforming nature of the existing home, should an issue arise concerning the existing house.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' variance requests should be granted.

THEREFORE, IT IS ORDERED, this 14 day of July, 2005, by this Deputy Zoning Commissioner, that the Petitioners' request for variance in Case No. 05-581-A (7355 Chesapeake Road), from Sections 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an existing single-family dwelling with a minimum lot width of 50 ft. in lieu of the required 55 ft., be and is hereby GRANTED.

IT IS FURTHER ORDERED, that the Petitioners' request for variance in Case No. 05-582-A (7357 Chesapeake Road), from Sections 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a minimum lot at the front building line of 50 ft. in lieu of the required 55 ft., be and is hereby GRANTED.

Approval of the above variance requests are subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition;

2. Compliance with the ZAC comments submitted by the Office of Planning dated June 6, 2005, a copy of which is attached hereto and made a part hereof; and

3. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order

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

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

Petition for Variance

CBCA

to the Zoning Commissioner of Baltimore County

for the property located at #7357 Chesapeake Road

which is presently zoned D.R. 5.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1 B02.3c1 (CURRENT) TO PERMIT A MINIMUM LOT WIDTH AT THE FRONT BUILDING LINE, OF 50 FT. IN LIEU OF THE REQUIRED 55 FT.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

see attached

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

Blue Water Properties, LLC

Name - Type or Print

Signature, member

Jimmy Harris

Name - Type or Print

Signature

P.O. Box 234 443-829-6957

Address Telephone No.

White Marsh MD 21162

City State Zip Code

Representative to be Contacted:

Site Rite Surveying, Inc.

Name

200 E. Joppa Road, Room 101 410-828-9060

Address Telephone No.

Towson, MD 21286

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 05-582-A

Reviewed By SMM Date 05-11-05

REV 9/15/98

05-582-A

REASONS FOR VARIANCE
#7357 CHESAPEAKE ROAD

1. Lot of record on plat dated January 16, 1940 and development contains 50 foot lot widths.

2. Proposed development of subject property meets the B.C.Z.R. except for lot width and is within the spirit and intent and permitted use of such regulations.

3. Granting relief for this petition will not adversely affect the welfare or safety of the community.

05-582-A

Department of Permits and Development Management

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

June 20, 2005

Blue Water Properties, LLC.
Jimmy Harris
P.O. Box 234
White Marsh, Maryland 21162

Dear Mr. Harris:

RE: Case Number: 05-582, 7357 Chesapeake Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 11, 2005.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Site Rite Surveying, Inc. 200 East Joppa Road Rm. 101 Towson 21286

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

SHA State Highway Administration — Driven to Excel

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Maryland Department of Transportation

Date: 5·20·05

Ms. Kristen Matthews
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 582 JRA

Dear. Ms. Matthews:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: June 6, 2005

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 5-581 and 5-582**

The Office of Planning has reviewed the subject request and has determined that the petitioner owns sufficient adjoining land to conform to the minimum width and area requirements and therefore does not meet the standards stated in Section 304.1.C of the BCZR. However, there appears to be several existing undersized lots in the neighborhood. As such, this office does not oppose the petitioner's request.

If the petitioner's request is granted, the following conditions shall apply to the proposed dwelling:

1. Submit building elevations to this office for review and approval prior to the issuance any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
2. Provide landscaping along the public road.

For further questions or additional information concerning the matters stated herein, please contact David Pinning with the Office of Planning at 410-887-3480.

Prepared By: Martha Cummings

Division Chief: Lynn Lanham

MAC/LL

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development Management

DATE: May 25, 2005

FROM: Dennis A. Kennedy, Acting Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For May 31, 2005
Item No. 582

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment(s).

The minimum right-of-way for all public roads in Baltimore County is 40-feet. Setback shall be modified accordingly.

The flood protection elevation for this site is 11.2.

In conformance with *Federal Flood insurance* Requirements, the first floor or basement floor must be at least 1-foot above the flood plain elevation in all construction.

The property to be developed is located to tidewater. The developer is advised that the proper sections of the *Baltimore County Building Code* must be followed whereby elevation limitations are placed on the lowest floor (including *basements*) of residential (*commercial*) development.

The building engineer shall require a permit for this project.

The building shall be designed and adequately anchored to prevent flotation, collapse or lateral movement of structure with materials resistant to flood damage.

Flood resistant construction shall be in accordance with requirement of B.O.C.A. International Building Code adopted by the county.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 582-05252005.doc

Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
Tel: 410-887-4500

Baltimore County

James T. Smith, Jr., County Executive
John J. Hohman, Chief

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

May 23,2005

ATTENTION: Zoning Review Planners

Distribution Meeting of April 4, 2005

Item No. 568,570,571,573,574,575,576,577,579,580,581,582

Pursuant to your request, the above referenced plan(s) have been reviewed by this Office and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

The Fire Department has no comments at this time.
If you have any questions contact my office.

Acting Lt. Warren T. Moffitt
Fire Marshal's Office
410-887-4880
MS-1102F

Cc:file

RE:	PETITION FOR VARIANCE 7357 Chesapeake Road; SW/side Chesapeake Road, 115' W c/line Susquehanna Road 15th Election & 6th Councilmanic Districts Legal Owner(s): Blue Water Properties, LLC* by Jimmy Harris, Member Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 05-582-A

* * * * * * * * * * * * *

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of May, 2005, a copy of the foregoing Entry of Appearance was mailed to, Site Rite Surveying, Inc, 200 E Joppa Road, Suite 101, Towson, MD 21286, Representative for Petitioner(s).

Peter Max Zimmerman

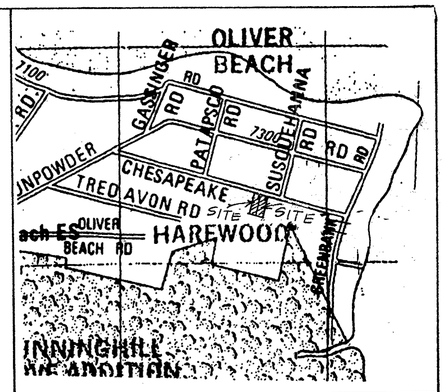
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
MAY 20 2005
Per... KLW

PLAN TO ACCOMPANY
PETITION FOR VARIANCE

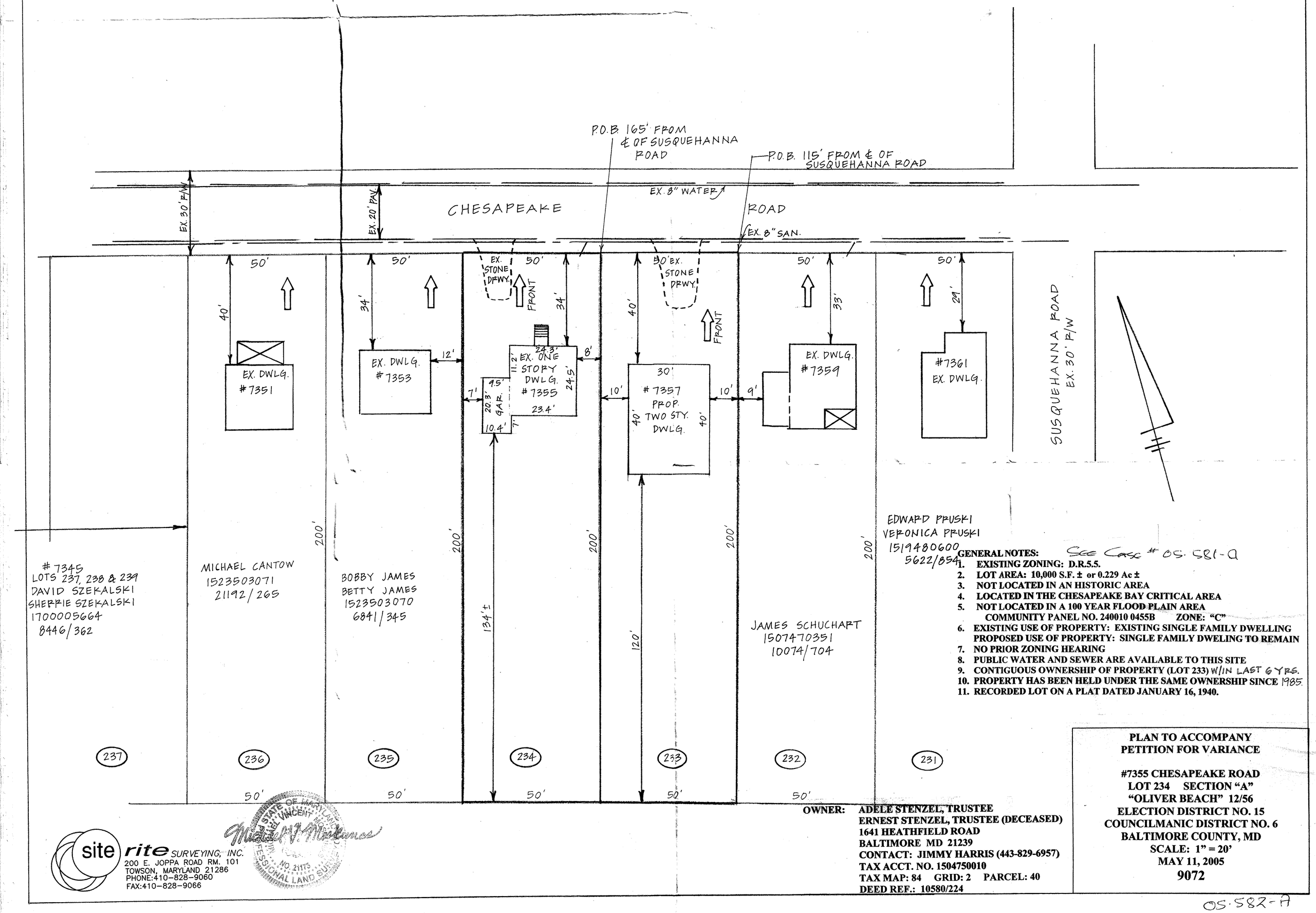
#7357 CHESAPEAKE ROAD
LOT 233 SECTION "A"
"OLIVER BEACH" 12/56
ELECTION DISTRICT NO. 15
COUNCILMANIC DISTRICT NO. 6
BALTIMORE COUNTY, MD
SCALE: 1" = 20'
MAY 11, 2005
9072

GENERAL NOTES:
1. EXISTING ZONING: D.R.5.5.
2. LOT AREA: 10,000 S.F. ± or 0.229 Ac ±
3. NOT LOCATED IN AN HISTORIC AREA
4. LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA
5. NOT LOCATED IN A 100 YEAR FLOOD PLAIN AREA
   COMMUNITY PANEL NO. 240010 0455B ZONE: "C"
6. EXISTING USE OF PROPERTY: VACANT
   PROPOSED USE OF PROPERTY: SINGLE FAMILY DWELING
7. NO PRIOR ZONING HEARING
8. PUBLIC WATER AND SEWER ARE AVAILABLE TO THIS SITE
9. CONTIGUOUS OWNERSHIP OF PROPERTY (LOT 234) (WITHIN LAST SIX YEARS)
10. PROPERTY HAS BEEN HELD INTACT SINCE 1940.
11. RECORDED LOT ON A PLAT DATED JANUARY 16, 1940.



VICINITY MAP : SCALE: 1"=1000'

OWNER: BLUE WATER PROPERTIES
11450 PULASKI HIGHWAY
SUITE 1
WHITE MARSH, MD 21162
CONTACT: JIMMY HARRIS (443-829-6957)
TAX ACCT. NO. 1506570030
TAX MAP: 84 GRID: 2 PARCEL: 40
DEED REF.:



GENERAL NOTES: See Case # 05-581-A
1. EXISTING ZONING: D.R.5.5.
2. LOT AREA: 10,000 S.F. ± or 0.229 Ac ±
3. NOT LOCATED IN AN HISTORIC AREA
4. LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA
5. NOT LOCATED IN A 100 YEAR FLOOD PLAIN AREA
   COMMUNITY PANEL NO. 240010 0455B ZONE: "C"
6. EXISTING USE OF PROPERTY: EXISTING SINGLE FAMILY DWELLING
   PROPOSED USE OF PROPERTY: SINGLE FAMILY DWELING TO REMAIN
7. NO PRIOR ZONING HEARING
8. PUBLIC WATER AND SEWER ARE AVAILABLE TO THIS SITE
9. CONTIGUOUS OWNERSHIP OF PROPERTY (LOT 233) W/IN LAST 6 YRS.
10. PROPERTY HAS BEEN HELD UNDER THE SAME OWNERSHIP SINCE 1985.
11. RECORDED LOT ON A PLAT DATED JANUARY 16, 1940.

OWNER: ADELE STENZEL, TRUSTEE
ERNEST STENZEL, TRUSTEE (DECEASED)
1641 HEATHFIELD ROAD
BALTIMORE MD 21239
CONTACT: JIMMY HARRIS (443-829-6957)
TAX ACCT. NO. 1504750010
TAX MAP: 84 GRID: 2 PARCEL: 40
DEED REF.: 10580/224

PLAN TO ACCOMPANY
PETITION FOR VARIANCE

#7355 CHESAPEAKE ROAD
LOT 234 SECTION "A"
"OLIVER BEACH" 12/56
ELECTION DISTRICT NO. 15
COUNCILMANIC DISTRICT NO. 6
BALTIMORE COUNTY, MD
SCALE: 1" = 20'
MAY 11, 2005
9072

site rite SURVEYING, INC.
200 E. JOPPA ROAD RM. 101
TOWSON, MARYLAND 21286
PHONE:410-828-9060
FAX:410-828-9066

STATE OF MARYLAND — MICHAEL VINCENT MARKUNAS — NO. 21175 — PROFESSIONAL LAND SURVEYOR

05-582-A