IN RE: PETITION FOR VARIANCE SW corner of Hinton Avenue and 5th Street 15th Election District 7th Councilmanic District **(2808 5th Street)**	* * * *	BEFORE THE DEPUTY ZONING COMMISSIONER FOR BALTIMORE COUNTY
Mark Fabiszak *Petitioner* William Robert Aburn *Contract Purchaser*	* * *	**Case No. 08-200-A**

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owner of the subject property, Mark Fabiszak, and the contract purchaser, William Robert Aburn. Variance relief is requested from Sections 1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for the following:

- To permit a side street setback of 10 feet in lieu of the required 25 feet for a new dwelling; and
- To permit a lot width of 50 feet in lieu of the required 55 feet; and
- To permit an interior side yard setback of seven feet in lieu of the required 7.5 feet and a side street setback of seven feet in lieu of the required 18.75 feet for an open deck.

The subject property and the requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the variance request was Petitioner William Robert Aburn, the contract purchaser. Also appearing was David Billingsley with Central Drafting & Design, Inc., the consultant who prepared the site plan.

Testimony and evidence offered revealed that the subject property is a rectangular-shaped parcel containing approximately 7,500 square feet or 0.127 acre, more or less, and zoned D.R.5.5.

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The property is located at the corner of Hinton Avenue and 5th Street, south of Back River, in the Millers Island area of Baltimore County. The property is currently unimproved. As shown on the SDAT Real Property Data Search which was marked and accepted into evidence as Petitioner's Exhibit 2, Mr. Fabiszak is the current owner of the property. The deed which was marked and accepted into evidence as Petitioner's Exhibit 3 shows that one-half interest in the property was gifted from Margaret Schilpp, his mother, to Mr. Fabiszak in October 2003, making Mr. Fabiszak the sole owner of the property. The property, referred to in previous deeds as Lot 78, has been known as an existing lot of record since at least 1965 when it was conveyed as a single lot on July 1, 1965, as shown on the deed which was marked and accepted into evidence as Petitioner's Exhibit 4.

The property was at one time improved with a dwelling, as shown on the sewer plan which was marked and accepted into evidence as Petitioner's Exhibit 5. That plan shows a dwelling located in the west side of the property, facing Hinton Avenue. Interestingly, as shown on Petitioner's Exhibit 5, at one time, a portion of the dwelling encroached on adjacent Lot 77. Mr. Billingsley indicated that an informal agreement existed between the owners of Lot 77 and Lot 78 to allow the previous dwelling to encroach on Lot 77, but that agreement would be extinguished upon the removal of the dwelling on Lot 78. Thereafter, the dwelling was virtually destroyed following Hurricane Isabel in September 2003. It has since been razed, leaving the property unimproved, though it has access to public water and sewer service. At this juncture, Petitioner desires to purchase the property and erect a home on the property as shown on the site plan. The lot is approximately 50 feet wide by 150 feet deep. Petitioner proposes to erect a two-story dwelling approximately 30 feet wide by 50 feet deep. The dwelling would front 5th Street and would also would have a wrap around deck 10 feet deep off the front and back and three feet deep off the sides of the dwelling.

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Petitioner is in need of 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 30 foot wide dwelling, Petitioner is in need of variance relief for a side street setback of 10 feet in lieu of the required 25 feet; moreover, in order to add a wrap around deck, Petitioner is in need of variance relief for an interior side yard setback of seven feet in lieu of 7.5 feet and a side street setback of seven feet in lieu of 18.75 feet for an open deck.

In support of the variance for the wrap around deck, Petitioner indicated that his wife is afflicted with lupus and has difficulty walking. Petitioner also added that his wife receives social security disability benefits and in anticipation of Petitioner's wife being potentially confined to a wheel chair, Petitioner is proposing a wrap around porch so his wife can move around from the front to the back of the home. Petitioner plans to install an elevator in the home as well. Also in support of the variances, Mr. Billingsley pointed out that most of the lots in Swan Point are 50 foot wide lots. The ones that are not 50 feet wide generally consist of double lots or those that have undergone lot line adjustments to meet the minimum width requirements. He indicated that none of the adjacent properties have ever been owned at the same time with the subject property so as to meet the 55 foot lot width requirement. He also indicated that the subject property is a unique parcel in that it is a corner lot and is constrained by the fact that the side yard facing Hinton Avenue must nonetheless conform to the front yard setback requirement. Finally, Mr. Billingsley indicated that Hinton Road is more akin to an alley or access road than a through street. The right-of-way is only 15 feet wide and the road itself is only about 12 to 13 feet wide, and mainly gives access to homes along the Back River.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments received from the Office of Planning dated November 26, 2007 indicate that Petitioner does not own sufficient adjoining land to conform to the minimum width and area

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requirements and therefore does meet the standards stated in Section 304.1.C of the B.C.Z.R. There also appear to be several existing undersized lots in the neighborhood. As such, that Office does not oppose Petitioner's request. The comments further indicate that building elevations shall be submitted for review and approval prior to the issuance of any building permit; the proposed dwelling shall be compatible in size, building materials, color and architectural detail as that of the existing dwellings in the area; and landscaping shall be provided along the public road. Comments received from the Bureau of Development Plans Review dated November 6, 2007 indicate that the first floor or basement must be at least one foot above the flood plain elevation in all construction, the building should be designed and adequately anchored to prevent flotation or collapse and constructed of materials resistant to flood damage, and flood-resistant construction should be in accordance with the Baltimore County Building Code which adopts the International Building Code.

Comments received from the Department of Environmental Protection and Resource Management dated January 10, 2008 indicates that development of the property must comply with Chesapeake Bay Critical Area Regulations. Additional comments indicate that a maximum of 25% of the site may be covered by impervious surfaces; however, the allotted 1,875 square feet may be exceeded by 500 square feet of impervious with offsetting mitigation. Also, 15% tree cover must be provided during the permit evaluation process.

Considering the aforementioned testimony and evidence presented, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. I also find that the imposition of zoning on this property disproportionably impacts the subject property as compared to others in the zoning district. I therefore find the property unique in a zoning sense.

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I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. In short, strict compliance would prevent Petitioner from erecting a dwelling that is compatible with others in the neighborhood and would essentially render an otherwise desirable property useless and unbuildable.

Finally, I find these variances can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioner's variance requests should be granted.

THEREFORE, IT IS ORDERED this 29th day of January, 2008 by this Deputy Zoning Commissioner, that Petitioner's variance requests from Sections 1B02.3.C.1 and 303.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for the following:

- To permit a side street setback of 10 feet in lieu of the required 25 feet for a new dwelling; and
- To permit a lot width of 50 feet in lieu of the required 55 feet; and
- To permit an interior side yard setback of seven feet in lieu of their required 7.5 feet and a side street setback of seven feet in lieu of the required 18.75 feet for an open deck

be and are hereby GRANTED, subject to the following.

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

2. Petitioner shall submit building elevations to the Office of Planning for review and approval prior to the issuance of any building permit. The proposed dwelling shall be

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compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.

3. Petitioner shall provide landscaping along the public road (Hinton Avenue) as approved by the Office of Planning.

4. The base flood elevation for this site is 9.4 feet Baltimore County Datum. The flood protection elevation for this site is 10.4 feet. 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.

5. The property to be developed is located adjacent 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.

6. The building engineer shall require a permit for this project.

7. 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 the Baltimore County Building Code which adopts, with exceptions, the International Building Code.

8. Development of the property must comply with Chesapeake Bay Critical Area Regulations. A maximum of 25% of the site may be covered by impervious surfaces; however, the allotted 1,875 square feet may be exceeded by 500 square feet of impervious with offsetting mitigation. Also, 15% tree cover must be provided during the permit evaluation process.

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

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

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BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

THOMAS H. BOSTWICK
Deputy Zoning Commissioner

January 29, 2008

MARK FABISZAK
5012 EAST EAGER STREET
BALTIMORE MD 21205

Re: Petition for Variance
Case No. 08-200-A
Property: 2808 5th Street

Dear Mr. Fabiszak:

Enclosed please find the decision rendered in the above-captioned case.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

Enclosure

c: William Robert Aburn, 7709 Iroquois Avenue, Baltimore MD 21219
David Billingsley, Central Drafting & Design, Inc., 601 Charwood Court, Edgewood MD 21040