

JOHN A. OLSZEWSKI, JR. County Executive

MAUREEN E. MURPHY
Chief Administrative Law Judge
ANDREW M. BELT
Administrative Law Judge
DEREK J. BAUMGARDNER
Administrative Law Judge

January 22, 2024

Michael Frate and Ann Butterworth – <u>ann.m.butterworth@gmail.com</u> 109 Woodwind Road Catonsville, MD 21228

RE:

Petition for Administrative Variance

Case No. 2023-0262-A

Property: 109 Woodwind Road

Dear Mr. Frate and Ms. Butterworth:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Pursuant to Baltimore County Code § 32-3-401(a), "a person aggrieved or feeling aggrieved" by this Decision and Order may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

MAUREEN E. MURPHY Chief Administrative Law Judge for Baltimore County

MEM:dlw Enclosure

c: Ronald Johnston - ron@rjarchitect.com

IN RE: PETITION FOR ADMIN. VARIANCE

(109 Woodwind Road)

1st Election District
1st Council District
Michael Frate & Ann Butterworth

\* HEARINGS FOR

\* BALTIMORE COUNTY

Petitioners

\* CASE NO. 2023-0263-A

\* \* \* \* \* \* \* \*

#### **OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings ("OAH") as a Petition for Administrative Variance filed by the legal owners of the property, Michael Frate and Ann Butterworth ("Petitioners") for the property located at 109 Woodwind Road, Catonsville (the "Property"). The Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations ("BCZR"), §1B02.3.C.1, to permit a rear addition with a setback of 14 ft. in lieu of the required 30 ft. rear yard setback. The Property is more fully depicted on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1. Street view photographs of the Property were provided. (Pet. Exs. 2A-2F).

A Zoning Advisory Committee ("ZAC") comment was received from the Department of Public Works and Transportation ("DPWT") which states as follows:

Case No. 2023-0263-A, 109 Woodwind Rd.

A) There is an existing easement on the property as shown on the plan submitted with the application. The proposed addition is not shown within the easement area. There is an existing fence and shed shown in the easement that should be removed.

The Petitioners having filed a Petition for Administrative Variance and the Property having been posted on December 29, 2023 and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

The Property measures 0.201 ac +/- (8,432 sf +/-) and was created as Lot 7 on the Plat of Section One of "Woodwind" as recorded in Land Records of Baltimore County on January 4, 1960 (Plat Book WJR 26, folio 126). The Plat of Section One of Woodwind was approved by the Baltimore County Planning Board on December 9, 1959. It is a triangular shaped lot which is improved with a single-family home constructed in 1961. There is an existing rear yard deck and small front porch.

Petitioners plan to construct additions in both side yards; the western side where the driveway is located to be used as an attached garage. Additionally, they plan to construct a porch on the front/side yard, as well as a screen porch and new deck in the rear yard (removing the existing rear deck).

Despite the Petition's request for relief under BCZR, §1B02.3.C.1, pursuant to BCZR, §1B02.3.A.1, because the Plat of Section One Woodwind was approved by the Planning Board in 1959 when the Property was zoned R-6, the applicable front, rear and side yard setbacks are those set forth in 1955 BCZR, §211.2 (25 ft front yard setback); §211.3. (8 ft. for one side yard and not less than 20 ft for sum of both); and §211.4 (30 ft. rear yard setback). With regard to open projections into yards, 1955 BCZR, §301 requires that a one-story open porch (with or without a roof) may extend into any required yard not more than 25% of minimum required depth of a front or rear yard, or the minimum required width of a side yard.

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).

Applying the standard in *Cromwell*, *supra*, to this Case, the uncontroverted facts reveal that this is an irregular, triangular-shaped lot with a front yard and 2 side yards. It is unclear from the Site Plan whether the home, when it was constructed in 1961, met the required 30 ft rear yard setback as there is no measurement on the Site Plan. The Plat of Section One of Woodwind does not show any other triangular-shaped lots. The proposed screen porch in the rear is considered an "addition" but the requested 14 ft. reduced rear yard setback is actually measured to the side yard on the Site Plan. It appears that both proposed side yard additions will meet the 1955 BCZR side yard setbacks of 8 ft. for one, and 20 ft. sum for both. In regard to the proposed front/side porch and rear yard deck, those structures must meet the requirements of 1955 BCZR, §301.1.

Given the irregular shape of the Property, I find that the Petitioners would suffer a practical difficulty and unreasonable hardship if the 1955 BCZR rear yard setback of 30 ft. was not reduced to 14 ft. as they would not be able to construct the rear screen porch which is a typical improvement to single family home and where, as here, a rear deck already exists. I also find that the requested Variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the lack of opposition.

However, as indicated on the DPWT ZAC comment, located within the existing 10 ft. Drainage and Utility easement are a shed and fence. Prior to the issuance of any building permits, both the shed and fence must be removed from the Drainage and Utility easement as no structures or improvements are permitted to be located therein.

Pursuant to the posting of the Property and the provisions of both the BCC and the BCZR, and for the reasons given above, the requested Variance will be granted, subject to conditions.

THEREFORE, IT IS ORDERED, this <u>22nd</u> day of January, 2024, by the Administrative Law Judge for Baltimore County, that the Petition for Variance relief from the Baltimore County Zoning Regulations ("BCZR"), §1B02.3.A.1 and §1B02.3.B, and in turn, from 1955 BCZR, §211.4 to permit a rear addition with a setback of 14 ft. in lieu of the required 30 ft. rear yard setback, be, and it is hereby, **GRANTED**.

The relief granted herein shall be subject to the following:

- 1. Petitioners may apply for their appropriate permits 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, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- 2. Prior to the issuance of any building permits, Petitioners shall comply with DPWT ZAC comment, a copy of which is attached hereto, requiring the Petitioners to remove, to the satisfaction of DPR/DPWT, the shed and fence from the 10 ft Drainage and Utility Easement as shown on the Site Plan.
- 3. With regard to all proposed open projections as shown on the Site Plan, Petitioners shall comply with 1955 BCZR, §301.1 which requires that a one-story open porch (with or without a roof) may extend into any required yard not more than 25% of minimum required depth of a front or rear yard or the minimum required width of a side yard.
- 4. The Site Plan, (Pet. Ex. 1) a copy of which is attached hereto, is incorporated herein.

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

MAUREEN E. MURPHY
Chief Administrative Law Judge

Mauren E. Murphy

for Baltimore County

MEM:dlw

The Department of Public Works and Transportation (DPWT) Bureau of Engineering and Construction offers the following comments following the review of the ZAC Agenda for the distribution meeting of January 2, 2024 and comments due January 9, 2024:

#### 8) Case #2023-0263-A, 109 Woodwind Rd.:

A) There is an existing easement on the property as shown on the plan submitted with the application. The proposed addition is not shown within the easement area. There is an existing fence and shed shown in the easement that should be removed.

Terry Curtis Date: 1/8/24



### ADMINISTRATIVE ZONING PETITION

FOR ADMINISTRATIVE VARIANCE – OR – ADMINISTRATIVE SPECIAL HEARING
To be filed with the Department of Permits, Approvals and Inspections
To the Office of Administrative Hearings for Baltimore County for the property located at:

10 the Office of Administrative Hearings to 2	2/228 Currently Zoned DR 5.5
Address 109 Woodwind Rd Catensville, Md	
	Tax Account # 0 1 0 3 + + 0 + 9 0 1: chael Frate
5 Wiler (5) 1 Tillion Hams (5)	
(SELECT THE HEARING(S) BY MARKING $\underline{X}$ AT THE APPROPRI	ATE SELECTION(S) AND ADDING THE PETITION REQUEST)
For Administrative Variances, the Affidavit on the reverse of this Petition fo	
The undersigned, who own and occupy the property situate in Baltimore Coun nereof, hereby petition for an:	ty and which is described in the plan/plat attached hereto and made a part
1ADMINISTRATIVE VARIANCE from Section(s)	
BCZR 1B02.3.C.1 to permit a rear addition with a	setback of 14', in lieu of the required 30' rear
yard setback.	, service of Teal
of the zoning regulations of Baltimore County, to the zoning law of Baltimore County	County.
<ol> <li>ADMINISTRATIVE SPECIAL HEARING to approve a waiver pursuar work in this space: i.e., to raze, alter or construct addition to building)</li> </ol>	nt to Section 32-4-107(b) of the Baltimore County Code: (indicate type of
of the zoning regulations of Baltimore County, to the zoning law of Baltimore C	County.
Property is to be posted and advertised as prescribed by the zoning regulation I/ we agree to pay expenses of above petition(s), advertising, posting, etc. and Baltimore County adopted pursuant to the zoning law for Baltimore County.	ns. d further agree to be bound by the zoning regulations and restrictions of
Owner(s)/Petitioner(s):	,
Name#1-Type or Print Signature #1 109 Woodwind Road Catansville Maria Mailing Address 21228, 410-294-8604 1900	n e e e e e e e e e e e e e e e e e e e
Attorney for Owner(s)/Petitioner(s):	Representative to be Contacted:
Automosy for Owner(o).	Ronald Johnston
Name - Type or Print	Name - Type or Print
Signature	Signature Signature
	11407 Barley Field Way, Marriottsville Ma Mailing Address City State 21104,410-442-3667 ron@rjarchitect.c
Mailing Address City State	Mailing Address City State  21104,410-442-3667 ron@ciarchitect.c
Zip Code Telephone # Email Address	Zip Code Telephone # Email Address
A PUBLIC HEARING having been formally demanded and/or found to be	e required, it is ordered by the Office of Administrative Hearings for
Baltimore County, this day of, hearing, advertised, and re-posted as required by the zoning regulations of B	that the subject matter of this petition be set for a public saltimore County.
	Administrative Law Judge for Baltimore County
2022 0-12 0 17 11/11	
Case Number 2023 · 0263 · A Filing Date 12 1 18 1	UI Estimated Fosting Date 10131 100 Neviewor 70

## Affidavit in Support of Administrative Variance (THIS AFFIDAVIT IS NOT REQUIRED FOR AN HISTORIC ADMINISTRATIVE SPECIAL HEARING)

The undersigned hereby affirms under the penalties of perjury and upon personal knowledge to the Administrative Law Judge for Baltimore County, that the information herein given is true and correct and that the undersigned is/are competent to testify in the event that a public hearing is scheduled in the future with regard thereto. In addition, the undersigned hereby affirms that the property is not the subject of an active Code Enforcement case and that the residential property described below is owned and occupied by the undersigned.

Address: 109 Woodwind Road Ca	tensville Maryland 21228
Address: 109 Woodwind Road Ca Print or Type Address of Property	City / State Zip Code
Based upon personal knowledge, the following are the Variance at the above address. (Clearly state practice)	he facts upon which I/we base the request for an Administrative ctical difficulty or hardship here)
see attacked	
(If additional space for the petition request or the Signature of Owner (Affiant)  Michael Frate	Signature of Owner (Affiant)
Michael Frate Name - Print or Type	Name - Print or Type
The following information is to be co	ompleted by a Notary Public of the State of Maryland
STATE OF MARYLAND, COUNTY OF BALTIMOR	E, to wit:
I HEREBY CERTIFY, this 30 day of No and for the County aforesaid, personally appeared:	before me a Notary of Maryland, in
Print name(s) here: MIChael BISHLE	worth & ann Botterworth
the Affiant(s) herein, personally known or satisfactor	ily identified to me as such Affiant(s).
AS WITNESS my hand and Notaries Seal  Notary Public  O 10-2027  My Commission Expires	W AUBLIC PHILIPPING TO THE COUNTY OF THE

#### Affidavit in Support of Administrative Variance

We are petitioning for this variance because our property is unique and different from all other surrounding properties in our community, and this uniqueness prevents us from adding to our house in the manner in which our neighbors are able to.

Our lot is an irregular "pie shaped" property. There is no rear property line; the side property lines come to a point in the rear at an acute angle. Based on our understanding of Mr. Jeff Perlow's explanation/interpretation of the applicable R-6 regulations from his conversation with our architect on May 30, 2023, the regulatory setbacks for any proposed addition would be 8 feet from the side and 30 feet straight back. This 30-foot straight back, as we understand it, effectively precludes adding anything of usable size to the sides or rear of the house.

The additions we propose to make to the dwelling will be in compliance with the required 8 foot side set-backs from the neighboring side property lines, and will not adversely impact our neighbor's properties or alter the character of the neighborhood. Since we have no rear property line, we request relief from having the 30-foot rear property line setback since it would be essentially applied to our side property lines. This relief is the minimum required to allow us to add functional additions to our home.

#### **ZONING PETITION PROPERTY DESCRIPTION**

Part A:

Zoning Property Description for 109 Woodwind Road, Catonsville, MD, 21228

Beginning at a point on the North side of Woodwind Road which is 27 feet with at the distance of 187.64 +/- feet West of the centerline of the nearest improved intersecting street South Hilltop Road which is \_\_\_\_\_\_ feet wide.

Description from the deed of trust: Beginning for the same and being known and designated as lot # 7, block A, section 1 of the plat of Woodwind first election district of Baltimore County, Maryland said plat being recorded among the land records of Baltimore County in plat liber WJR #26, folio 126. The improvements thereon being known as 109 Woodwind Road.

Part B:

See detailed survey attached from Dietz Surveying Inc

## BALTIMORE COUNTY DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS ZONING REVIEW OFFICE

#### **ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES**

Case Number: 2023 - 0263 - A Address 109 Goodsand Road
Contact Person: Shack Classification Phone Number: 410-887-3391 Planner, Please Print Your Name
Filing Date: 12/18/23 Posting Date: 12/31/23 Closing Date: 1/15/24
Any contact made with this office regarding the status of the administrative variance should be through the contact person (planner) using the case number.
1. <a href="POSTING/COST">POSTING/COST</a> : The petitioner must use one of the sign posters on the approved list and the petitioner is responsible for all printing/posting costs. Any reposting must be done only by one of the sign posters on the approved list and the petitioner is again responsible for all associated costs. The zoning notice sign must be visible on the property on or before the posting date noted above. It should remain there through the closing date.
2. <u>DEADLINE:</u> The closing date is the deadline for a neighbor (occupant or owner) within 1,000 feet to file a formal request for a public hearing. Please understand that even if there is no formal request for a public hearing, the process is not complete on the closing date.
3. ORDER: After the closing date, the file will be reviewed by the Administrative Law Judge. The judge may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. If all County/State agencies' comments are received, you will receive written notification as to whether the petition has been granted, denied, or will proceed to a public hearing. This decision is usually made within 10 days of the closing date. The written order will be mailed to you by First Class mail.
4. <a href="POSSIBLE PUBLIC HEARING AND REPOSTING:">POSSIBLE PUBLIC HEARING AND REPOSTING:</a> In cases that must go to a public hearing (whether due to a neighbor's formal request or by order of the Administrative Law Judge), notification will be forwarded to you. The sign on the property must be changed giving notice of the hearing date, time and location. As when the sign was originally posted, certification of this change and a photograph of the altered sign must be forwarded to this office.
Petitioner: This Part of the Form is for the Sign Poster Only (Detach Along Dotted Line)
USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT
Case Number: 2023 - 0263 - A Address 109 woodward 1606d
Petitioner's Name: Michael Luste Lanu Bertonorfelephone (Cell) 410 294. 8604
Posting Date: 12/31/23 Closing Date: 1/15/24
Wording for Sign: To Permit
addition with a cothack of 14' in lieu

a rear addition with a setback of 14', in lieu of the required 30' rear yard setback.

Keviseu 1/2022

#### **BALTIMORE COUNTY, MARYLAND**

#### INTEROFFICE CORRESPONDENCE

TO: Peter Gutwald, Director DATE: January 9, 2024

Department of Permits, Approvals

**FROM:** Vishnu Desai, Supervisor

Bureau of Development Plans Review

**SUBJECT:** Zoning Advisory Committee Meeting

For January 9, 2024 Item No. 2023-0263-A

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

DPW-T: There is an existing easement on the property as shown on the plan submitted with the application. The proposed addition is not shown within the easement area. There is an existing fence and shed shown in the easement that should be removed.

DPR: N/C

Landscape: N/C

Rec & Parks: N/C & No Greenways affected

#### **BALTIMORE COUNTY, MARYLAND**

#### **Inter-Office Correspondence**



TO: Hon. Maureen E. Murphy; Chief Administrative Law Judge

Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and

Sustainability (EPS) - Development Coordination

DATE: January 9, 2024

SUBJECT: DEPS Comment for Zoning Item # 2023-0263-A

Address: 109 WOODWIND RD

Legal Owner: Michael Frate, Ann Butterworth

Zoning Advisory Committee Meeting of January 9, 2024.

X The Department of Environmental Protection and Sustainability has no comment on the above-referenced zoning item.

#### Additional Comments:

Reviewer: Earl D. Wrenn



#### **CERTIFICATE OF POSTING**

December 29, 2023
amended for second inspection
Re: Zoning Case No. 2023-0263-A Legal Owner: Michael Frate & Ann Butterworth Closing date: January 15, 2024
Baltimore County Department of Permits, Approvals & Inspections County Office Building 111 West Chesapeake Avenue, Room 111 111 West Chesapeake Avenue Towson, MD 21204
Attention: Jeff Perlow
Ladies and Gentlemen,
This letter is to certify under the penalties of perjury that the two necessary signs required by law were posted conspicuously on the property located at 109 Woodwind Road.
The signs were initially posted on December 29, 2023.
The subject property was also inspected on
Sincerely,

See the attached sheets for the photos of the posted signs

Bruce E. Doak

MD Property Line Surveyor #531

Bruce E. Doak Consulting, LLC 3801 Baker Schoolhouse Road Freeland, MD 21053 410-419-4906 cell / 443-900-5535 office bdoak@bruceedoakconsulting.com





# ZONING NOTICE

ADMINISTRATIVE VARIANCE CASE NO. 2023-0263-A

109 Woodwind Road

REQUEST: A PERMIT A REAR ADDITION
WITH A SETBACK OF 14 FEET, IN LIEU OF
THE REQUIRED 30 FEET REAR YARD
SETBACK

#### PUBLIC HEARING?

PURSUANT TO SECTION 26-127(b)(1) BALTIMORE COUNTY CODE, AN ELIGIBLE INDIVIDUAL OR GROUP MAY REQUEST A PUBLIC HEARING CONCERNING THE PROPOSED VARIANCE, PROVIDED IT IS DONE IN THE ZONING OFFICE BEFORE JANUARY 15, 2024.

ADDITIONAL INFORMATION IS AVAILABLE AT ZONING ADMINISTRATION AND DEVELOPMENT MANAGEMENT 111 W. CHESAPEAKE AVENUE TOWSON, MD 21284 410-887-3391

#### Real Property Data Search () Search Result for BALTIMORE COUNTY

View Map

View GroundRent Redemption

View GroundRent Registration

Special Tax Recapture: None

Account Identifier:

District - 01 Account Number - 0103770790

**Owner Information** 

Owner Name:

FRATE MICHAEL J BUTTERWORTH ANN M

Use: Principal Residence:

109 WOODWIND RD

Deed Reference:

RESIDENTIAL YES /07733/ 00521

Mailing Address:

**BALTIMORE MD 21228** 

**Location & Structure Information** 

Premises Address:

109 WOODWIND RD

Legal Description:

BALTIMORE 21228-

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No:

0100 0017 0675 1040058.04

0000

1 A 7 2022

Plat Ref: 0026/ 0126

Town: None

Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use

1961

1,119 SF

StoriesBasementType

ExteriorQualityFull/Half BathGarageLast Notice of Major Improvements

STANDARD UNITSIDING/4 YES

1 full/ 1 half

#### Value Information

	Base Value	<b>Value</b> As of 01/01/2022	Phase-in Assessments	
			As of 07/01/2023	As of 07/01/2024
Land:	128,100	128,100		
Improvements	147,000	162,100		
Total:	275,100	290,200	285,167	290,200
Preferential Land:	0	0		

#### **Transfer Information**

Seller: CURCIO TONY J Type: ARMS LENGTH IMPROVED	Date: 11/25/1987 Deed1: /07733/ 00521	Price: \$95,000 Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

#### **Exemption Information**

Partial Exempt Assessments:	Class	07/01/2023	07/01/2024
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00 0.00	0.00 0.00

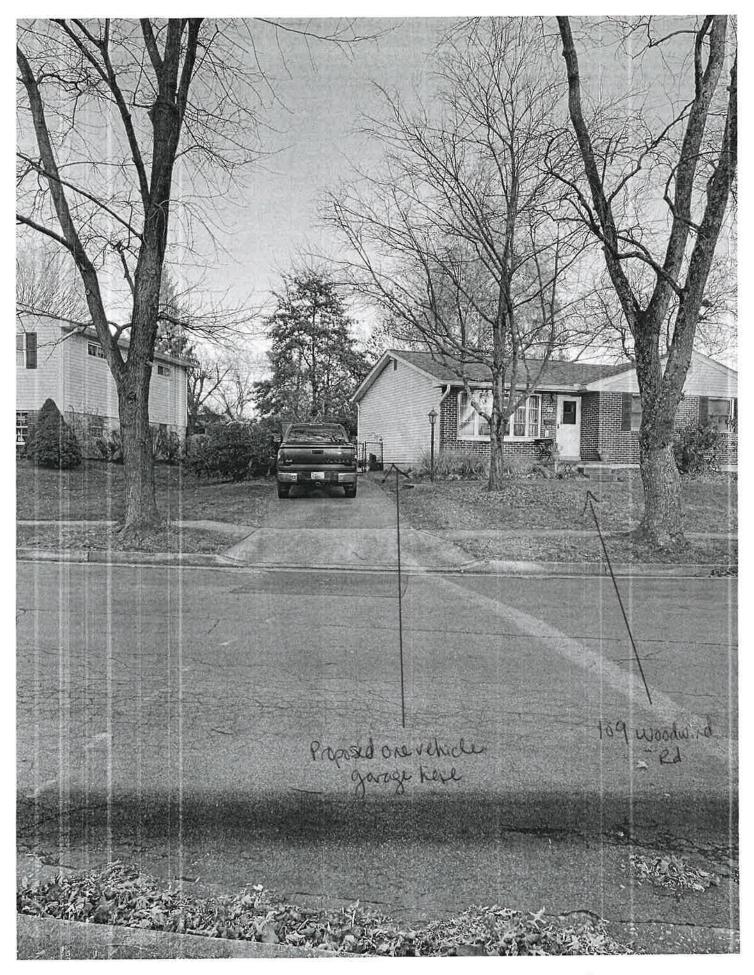
Special Tax Recapture: None

#### **Homestead Application Information**

Homestead Application Status: Approved 03/09/2009

#### Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application



2023.0263.1

