

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(120 Stonewall Road) *	OFFICE OF
1 st Election District	
1 st Council District *	ADMINISTRATIVE HEARINGS
Algirdas M. Veluona	
Petitioner *	FOR BALTIMORE COUNTY
	Case No. 2014-0216-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Rick Richardson, on behalf of the legal owner. The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a single family dwelling on an undersized lot. The variance petition seeks relief from B.C.Z.R. §1B02.3.C.1 as follows: (1) to permit a proposed dwelling with a side yard setback of 4 ft. and a summation of side yard setbacks of 25 ft. in lieu of the minimum required 20 ft. and a sum of 50 ft.; and (2) to permit a lot width of 57 ft. in lieu of the minimum required 150 ft.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1. Appearing at the public hearing in support of the requests was Algirdas Veluona and Rich Richardson, whose firm prepared the site plan. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Several members of the community attended the hearing and opposed the relief. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) dated May 30, 2014, indicating that agency did not oppose the petition.

The subject property is 19,499 square feet in size and is zoned DR 1. The property was improved with a small single family dwelling that was razed in 2007. Petitioner had hoped to

rebuild the home at the time, but he had health problems and his contractor defaulted on the project. At present, Petitioner proposes to construct a small single family dwelling on the property, but requires variance relief to do so.

To obtain variance relief a petitioner must show:

(1) The property is unique; and

(2) If variance relief is denied, petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioners have not met this test. While the lot is somewhat small and narrow, Petitioner has not identified any other factors that would render the property unique. The reality is that a petitioner faces a nearly insurmountable burden under Maryland law obtain a variance. In Cromwell v. Ward, 102 Md. App. 691, 711 (1995), the court noted that since 1927, only five reported Maryland cases have upheld the grant of variance relief (or reversed the denial of a variance petition). The court in Cromwell also held that “variances are rarely appropriate.” Id.

I am mindful of and sympathetic to Petitioner’s plight. If the proposed dwelling was constructed within one or two years after the former single family dwelling was razed in 2007 (depending on whether the County considered Petitioner to have “abandoned” the nonconforming use), the Petitioner would have been able to reconstruct a new dwelling of the same size without any further zoning approvals. B.C.Z.R. §§ 104.1 & 104.2.

The Regulations contain another provision that is designed to mitigate the harsh result in cases like this one, where an owner attempts to construct a dwelling on an undersized lot. That provision allows construction of a single family dwelling on a parcel that does not meet the minimum lot size and lot width requirements. B.C.Z.R. § 304.1. But that regulation is inapplicable here, because the proposed side yard setbacks are deficient; B.C.Z.R. §304.1.B requires compliance with all other “height and area regulations.”

In this case, Petitioner is unable to rely upon either of the above-discussed provisions, and is left with the daunting task of obtaining variance relief. Having considered the testimony and the exhibits, I do not believe the Petitioner has met the requirements of B.C.Z.R. § 307 and the cases interpreting that regulation.

THEREFORE, IT IS ORDERED this 17th day of June, 2014, by this Administrative Law Judge, that the Petition for Variance pursuant to Baltimore County Zoning Regulations (“B.C.Z.R.”) §1B02.3.C.1 as follows: (1) to permit a proposed dwelling with a side yard setback of 4 ft. and a summation of side yard setbacks of 25 ft. in lieu of the minimum required 20 ft. and a sum of 50 ft.; and (2) to permit a lot width of 57 ft. in lieu of the minimum required 150 ft., be and is hereby DENIED;

IT IS FURTHER ORDERED that the Petition for Special Hearing filed pursuant to B.C.Z.R §500.7 to approve a single family dwelling on an undersized lot, be and is hereby DISMISSED without prejudice, as MOOT.

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

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County