

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(Cedar Road)	*	OFFICE OF
15 <sup>th</sup> Election District		
7 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
Estate of Elaine P. Kruse		
	*	FOR BALTIMORE COUNTY
<b>Petitioner</b>		
	*	<b>Case No. 2015-0305-SPHA</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed 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 permit two undersized residential lots (by reconfiguring five (5) smaller existing lots) with an area of 0.57 of an acre each in lieu of the required 1.5 acres. In addition, a Petition for Variance pursuant to B.C.Z.R. § 1A04.3B(2)(b) seeks to allow a side yard setback of 25 ft. for each of the two lots in lieu of the required 50 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Elaine Joines, Carol Clasing Joe Kruse (children of the decedent) and Bruce Doak, whose firm prepared the site plan. J. Neil Lanzi, Esq. represented the Petitioner. There were no Protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP). That agency opposed the requests, and its comments will be discussed in greater detail below.

## PETITION FOR SPECIAL HEARING

The petition for special hearing seeks approval for two (2) building lots, which would be created by combining five (5) existing lots. The lots, like most of those in the neighborhood, are 50 ft. wide x 200 ft. deep, or 10,000 sq. ft. in area. The proposed lots shown on the plan would be 125 ft. wide x 200 ft., or 25,000 square feet in area. The DOP objects to this request, and opines that the T-2R Master Plan 2020 transect designation for the property is characterized by single family dwellings on 2 to 5 acres per dwelling.

While I appreciate the DOP's review and comments concerning the case, I disagree with its conclusions. As an initial matter, the Master Plan (in zoning cases at least) is merely a "guide" for future development. It is not a zoning regulation and does not provide density or area requirements for residential zones. More importantly, Petitioner provided a series of exhibits - - including photos and tax records - - which demonstrate the single family dwellings in the neighborhood are in fact situated on lots ranging from 10,050-30,912 square feet in area. Petitioner's Ex. Nos. 7 & 8. The proposed 25,000 sq. ft. lots would in my opinion be compatible with the pattern of existing development, and the petition will therefore be granted.

## VARIANCE

To obtain variance relief requires a showing that:

- (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).

Petitioner has met this test. The lots were created by a plat recorded in 1924, long before the adoption of the zoning regulations. As such the property is unique. If the B.C.Z.R. were strictly interpreted, Petitioner would experience a practical difficulty, given she would be unable to construct a dwelling on the lots. 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. In addition to the points discussed above, this is demonstrated by the support of the Back River Neck Peninsula Community Association and all adjoining owners, whose letters were admitted as Petitioner's Ex. Nos. 11 & 12.

THEREFORE, IT IS ORDERED this 15<sup>th</sup> day of **September, 2015**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to permit two undersized residential lots (by reconfiguring five (5) smaller existing lots) with an area of 0.57 of an acre each in lieu of the required 1.5 acres, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §1A04.3B(2)(b) to allow a side yard setback of 25 ft. for each of the two lots in lieu of the required 50 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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. Petitioners must comply with Critical Area and flood protection regulations prior to building permit application.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County

JEB:slh