

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(1110 & 1112 Burke Road) *	OFFICE OF
15 th Election District	
6 th Council District *	ADMINISTRATIVE HEARINGS
Ger Construction LLC,	
<i>Owner</i> *	FOR BALTIMORE COUNTY
Petitioner *	Case Nos. 2017-0050-SPHA &
	2017-0051-SPHA

* * * * *

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 Ger Construction LLC, legal owner (“Petitioner”).

This case involves two 50 ft. wide waterfront lots zoned RC-5. One of the lots (Lot No. 99, 1112 Burke Road) was improved with a single family dwelling which was recently razed. The other lot (Lot No. 98, proposed 1110 Burke Road) is unimproved. These cases were combined for purposes of the public hearing.

The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to determine that Lot Nos. 98 and 99 were not merged for zoning purposes. In addition, a Petition for Variance (as originally filed) seeks to permit a proposed single family dwelling on an existing lot of record with a height of 45 ft., side yard setbacks of 10 ft. and 10 ft., a rear yard setback of 55 ft. from the centerline of a road, and open projection (covered porch) with a rear yard setback of 49 ft. and an open projection (porch and stairs) with a side yard setback of 6 ft. in lieu of the required 35 ft., 50 ft. and 50 ft., 75 ft., 56.25 ft., and 37.5 ft., respectively. At the hearing, Petitioner withdrew its request for the proposed 6 ft. side yard setback for the porch and stairs. 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 David Billingsley. Several neighbors opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR), the Department of Environmental Protection and Sustainability (DEPS) and the Department of Planning (DOP).

SPECIAL HEARING

The special hearing request seeks a determination the lots have not merged for zoning purposes. In Maryland, an owner of contiguous parcels may merge the parcels to form one larger parcel or tract. *Friends of the Ridge v. BGE*, 352 Md. 645, 659 (1999). Whether merger has occurred is a question of intent, which can be inferred from the landowner's conduct.

Here, the neighbors testified the prior owner for many years used the home at 1112 Burke Road as a weekend cottage, and had a pool on the adjoining vacant lot. On similar facts, the court of appeals held the owners had used two adjoining lots as "one property" which resulted in a merger of the lots. *Remes v. Montgomery Co.*, 387 Md. 52, 57-58 (2005). In this case there was not sufficient testimony or evidence to make an informed decision regarding merger, although it would appear the issue is fairly debatable.

VARIANCE

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).

I do not believe Petitioner can satisfy this burden. The reality is these lots are similar in shape and size to many of the other lots in the Bowley's Quarters subdivision. As a result, I believe the variance requests must be denied.

THEREFORE, IT IS ORDERED this 13th day of **March, 2017**, 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 determine that Lot Nos. 98 and 99 were not merged for zoning purposes, be and is hereby **DISMISSED without Prejudice**.

IT IS FURTHER ORDERED that the petition for variance seeks to permit a proposed single family dwelling on an existing lot of record with a height of 45 ft., side yard setbacks of 10 ft. and 10 ft., a rear yard setback of 55 ft. from the centerline of a road, and open projection (covered porch) with a rear yard setback of 49 ft. and an open projection (porch and stairs) with a side yard setback of 6 ft. in lieu of the required 35 ft., 50 ft. and 50 ft., 75 ft., 56.25 ft., and 37.5 ft., respectively, be and is hereby **DENIED**.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw