

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(4010 Briar Point Road) *	OFFICE OF
15 th Election District	
6 th Council District *	ADMINISTRATIVE HEARINGS
David H. & Tyler D. Eggleton	
<i>Legal Owners</i> *	FOR BALTIMORE COUNTY
Petitioners *	Case No. 2017-0284-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 David H. Eggleton & Tyler D. Eggleton, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a single lot of record and proposed dwelling that is not a subdivision and that was in existence prior to September 2, 2003 to have an area of 1.04 acres in lieu of the required 1.5 acres. In addition, a Petition for Variance seeks: (1) to permit a garage to be located in the front yard of a dwelling in lieu of the rear yard; (2) to permit a garage with a maximum height of 18 ft. in lieu of the required 15 ft.; and (3) for the proposed dwelling, to permit side yard setbacks each to be 30 ft. in lieu of the required 50 ft. A revised site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Owners David H. and Tyler D. Eggleton and surveyor Bruce E. Doak appeared in support of the requests. There were no protestants or interested citizens in attendance. 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). None of the reviewing agencies opposed the requests.

The subject property is approximately 1.04 acres in size and is zoned RC 5. Mr. Doak testified the lot was created by deed in 1959. See Petitioners' Ex. 2. The waterfront property is unimproved and Petitioners propose to construct a new single-family dwelling on the lot. Petitioners also plan to construct a detached garage in the front yard, and a revised site plan was submitted (Petitioners' Ex. 1) showing the garage has been relocated to be on a line even with the front façade of the existing dwelling at 4016 Briar Point Road, as requested by the DOP. Zoning relief is required for both the dwelling and accessory building.

SPECIAL HEARING

The special hearing request concerns the 1.04 acre lot, which does not satisfy the 1.5 acre minimum lot size in the R.C. 5 zone. The pertinent regulation states a "lot having an area of less than 1 ½ acres may not *be created* in an R.C. 5 zone." B.C.Z.R. §1A04.3.B. (emphasis added). This lot was "created" in 1959, well before the adoption of the R.C. 5 regulations, which begs the question of whether zoning relief is required in the first instance. Even so, the Regulations provide certain "exceptions to minimum lot size," and as pertinent here indicate a lot which does not satisfy the "minimum acreage requirement" may be approved by special hearing. *Id.*

As is frequently the case, the Regulations do not provide a standard by which such a special hearing request should be judged. The Regulations expressly state the relief is by way of "special hearing under Article 5" rather than a variance, and as with all zoning requests the relief should not be granted unless Petitioners can establish the health, safety and general welfare of the public will not be negatively impacted. B.C.Z.R. § 600.1. Based on the revised site plan and other exhibits, I do not believe granting the special hearing request will have a detrimental impact upon the community.

The lot is slightly over one acre in size, and it appears based on an aerial photo (Pet. Ex. 3) as if other homes in the area are situated on parcels of a similar size. In addition, Petitioner submitted

elevation drawings (Pet. Ex. 5A & 5B) which indicate the home will be well-designed and attractive, and a condition will also be included in the final order requiring Petitioners to satisfy the R.C. 5 Performance Standards.

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).

Petitioners have met this test. The lot is narrow and deep (approximately 100 ft. x 450 ft.); this irregular shape renders the property unique. Petitioners would experience practical difficulty if the regulations were strictly interpreted because they would be unable to construct the proposed improvements. Finally, as demonstrated by the lack of County and/or community opposition, I do not believe granting the requests would have a detrimental impact upon the community.

THEREFORE, IT IS ORDERED this 14th day of **June, 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 permit a single lot of record and proposed dwelling that is not a subdivision and that was in existence prior to September 2, 2003 to have an area of 1.04 acres in lieu of the required 1.5 acres, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance: (1) to permit a garage to be located in the front yard of a dwelling in lieu of the rear yard; (2) to permit a garage with a maximum height of 18 ft. in lieu of the required 15 ft.; and (3) for the proposed dwelling, to permit side yard setbacks each to be 30 ft. 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 prior to issuance of permits comply with critical area and flood protection regulations.
3. Petitioners must prior to issuance of permits satisfy the R.C. 5 Performance Standards, as determined in the sole discretion of the DOP.

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