

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(5301 Bush Street)		
11 th Election District	*	OF ADMINISTRATIVE
5 th Council District		
Wadkins Construction, Inc.	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2017-0313-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Christopher Corey, Esq., on behalf of Wadkins Construction, Inc., the legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) For Lot 2 as shown on the site plan, to permit a minimum lot width of 94.61 ft. in lieu of the required 100 ft.; (2) For Lot 2 as shown on the site plan, to permit a minimum net lot area of 18,922 sq. ft. in lieu of the required 20,000 sq. ft.; (3) If necessary, for Lot 1 as shown on the site plan, to permit a side yard setback of 35 ft. along the Winkler Street right-of-way line, in lieu of the 40 ft. front yard setback requirement; and (4) For such other and further relief as may be required by the Administrative Law Judge (ALJ) for Baltimore County. A site plan was marked as Petitioner’s Exhibit 11.

Professional land surveyor Kenneth J. Wells appeared in support of the petition. Christopher Corey, Esq. represented the Petitioner. Several members of the community opposed the requests. The Petition was advertised and posted as required by the B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency did not oppose the requests but suggested certain façade treatments would

be required for the proposed dwellings.

The site is approximately 0.89 acres in size and zoned DR 2. A single-family dwelling was constructed on the property in 1951, although Petitioner has since razed that structure, which was apparently in very poor condition. The subject property is comprised of all of Lot 8 and a portion of Lot 7 as shown on the Plat of Forge Acres (recorded in 1948). Petitioner's Exhibit 4. The properties were the subject of Development Review Committee (DRC) Item DRC #042214-LLA wherein a lot line adjustment was granted in 2014. Petitioner's Exhibit 2. This lot line adjustment (as shown on the DRC Plan admitted as Exhibit 10) created Lot 1 and Lot 2 as shown on the redlined site plan. Petitioner proposes to construct a single-family dwelling and garage on each lot but requires variances to do so.

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).

Based on a review of the site plan and the testimony of Mr. Wells, I do not believe the property is "unique" as that term is used in Maryland case law. In the zoning context "unique" has a "customized meaning" to include shape, topography, subsurface conditions, environmental factors, historical significance, etc. *North v. St. Mary's County*, 99 Md. App. 502, 512 (1994). The lots are rectangular in shape and are very similar to other lots in the vicinity. There simply are no unique or defining attributes of the property that would support a finding of uniqueness.

In a contested variance case the petitioner faces an uphill battle. Indeed, I was unable to locate a Maryland appellate court opinion from the last twenty years which upheld the grant of a

variance. Under Maryland law, a variance should be granted “sparingly” since it is “an authorization for [that] ...which is prohibited by a zoning ordinance.” *Cromwell*, 102 Md. App. at 699. As such, I believe the petition must be denied.

THEREFORE, IT IS ORDERED, this 11th day of **July, 2017**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R”) as follows: (1) For Lot 2 as shown on the site plan, to permit a minimum lot width of 94.61 ft. in lieu of the required 100 ft.; (2) For Lot 2 as shown on the site plan, to permit a minimum net lot area of 18,922 sq. ft. in lieu of the required 20,000 sq. ft.; and (3) If necessary, for Lot 1 as shown on the site plan, to permit a side yard setback of 35 ft. along the Winkler Street right-of-way line, in lieu of the 40 ft. front yard setback requirement, 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:sln