

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(805 Bengies Road)	*	OFFICE OF
15 <sup>th</sup> Election District		
6 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
Marsha Noble	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Robert E. Click	*	<b>Case No. 2017-0329-SPHA</b>
<i>Contract Purchaser</i>		
Petitioners	*	

\* \* \* \* \*

**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 Marsha Noble, legal owner and Robert E. Click, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to confirm that a merger with adjacent lots did not occur, and to confirm that the density of the surrounding neighborhood is not being affected.

In addition, a Petition for Variance seeks to permit a lot width of 50 ft., side yard setbacks of 12 ft. minimum with a sum of 24 ft. and a lot area of 9,180 sq. ft. in lieu of the required 100 ft., 15 ft., 40 ft., and 20,000 sq. ft., respectively for a proposed dwelling on an existing lot of record. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Robert Click and David Billingsley 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. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the reviewing county agencies.

The subject property is approximately 9,180 square feet in size and zoned DR 2. The property is unimproved and there are no sheds, pools or structures of any kind on the lot. Mr. Click proposes to construct a single-family dwelling on the lot but requires zoning relief to do so.

### SPECIAL HEARING

The Petition for special hearing seeks confirmation that the subject property did not merge with the property at 803 Bengies Road, which is also owned by Ms. Noble and is her principal residence. As noted above, there are no structures of any kind on the subject property that were or could have been used in conjunction with or to benefit the existing dwelling at 803 Bengies Road. In addition, no testimony was presented at the hearing which would establish or suggest these two properties in essence functioned as a single parcel. As such, there is no basis upon which to determine the properties have merged.

The other aspect of the Petition for special hearing concerns whether the variance would increase the density of the surrounding neighborhood. Under the B.C.Z.R. a variance cannot be granted if it would result in an increase in density. B.C.Z.R. §307. The Department of Planning did not object to the special hearing request, and Lots 45 (known as 803 Bengies Road) & 46 (known as 805 Bengies Road) were created by the plat of Grantleigh, recorded in 1940. Petitioners' Exhibit 8. The grant of the variance would therefore not increase the density beyond that shown on the original plat, and the special hearing request will therefore be granted.

### VARIANCES

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).

The subject property is narrow and deep (approximately 200 ft. x 50 ft.). As such it is unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct the proposed dwelling. Finally, I find that the variances 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.

THEREFORE, IT IS ORDERED this 31<sup>st</sup> day of **July, 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 confirm that a merger with adjacent lots did not occur, and to confirm that the density of the surrounding neighborhood is not being affected, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the petition for variance to permit a lot width of 50 ft., side yard setbacks of 12 ft. minimum with a sum of 24 ft. and a lot area of 9,180 sq. ft. in lieu of the required 100 ft., 15 ft., 40 ft., and 20,000 sq. ft., respectively, for a proposed dwelling on an existing lot of record, be and is hereby GRANTED.

The relief granted herein shall be subject to 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.

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

JEB/sln

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County