

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(6803 Woodrow Avenue)		
12 th Election District	*	OFFICE OF
7 th Council District		
Michael C. Lam	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Isaac Gheiger	*	FOR BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	Case No. 2017-0335-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Michael C. Lam, legal owner, and Isaac Gheiger, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to permit a dwelling to be constructed on an undersized lot.

Michael Lam and David Billingsley appeared in support of the petition. The adjoining neighbors at 6801 Woodrow Avenue opposed the request. 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, although the Department of Planning noted it “has no objection to granting the petitioned zoning relief.”

The property was previously the subject of Case No. 2017-0003-A, wherein Petitioners requested variance relief under B.C.Z.R. §307 to construct a single-family dwelling on this unimproved lot. The variance request was denied, and an appeal was filed by Petitioners. The County Board of Appeals (CBA) did not decide the case, but instead remanded it to the OAH with instructions to transfer the case to the Department of Permits, Approvals and Inspections so

Petitioners could file an application for an undersized lot approval. The Petitioners filed the application and a public hearing was then scheduled in the OAH.

While it is true the variance was denied in the prior case, this is not a variance petition. Instead, this is a request under B.C.Z.R. §304 which concerns the use of undersized lots. The court of special appeals has stressed an applicant under §304 does not need to establish uniqueness and/or special circumstances, which are required in a variance case. *Mueller v. People's Counsel*, 177 Md. App. 43, 87 (2007) (“B.C.Z.R. § 304 does not contain elements of practical difficulty or uniqueness, which are embodied in § 307”). That regulation provides in pertinent part as follows:

§304.1. Types of dwellings allowed; conditions

Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

Addressing these in sequence, the lots here were created by a plat recorded in 1917. Petitioners' Exhibit 6. The Petitioners are not requesting any variances for height or yard setbacks. As such, “all other requirements of the height and area regulations are complied with,” per B.C.Z.R. § 304.1. B. Finally, the owners do not own any other land adjoining the subject property, and thus B.C.Z.R. §304.1.C. is satisfied.

I can certainly understand the neighbors' concerns, and if I lived in the community I too would not want a house to be constructed on this lot, which has been vacant for many years. But I am obligated to enforce the zoning regulations as they are written, and B.C.Z.R. §304 (relied upon by Petitioners) provides an alternate methodology to construct a dwelling on an undersized lot. Distilled to its essence, the only deficiency which prevents Petitioners from constructing a

dwelling by right is the lot width (i.e., 50 ft. in lieu of the required 55 ft.), and B.C.Z.R. §304 provides the authority to build a home on such a lot.

THEREFORE, IT IS ORDERED this 3rd day of **August, 2017** by this Administrative Law Judge, that the Petition for Special Hearing to permit a dwelling to be constructed on an undersized lot, 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.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln