

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(7702 Bay Front Road)		
15 th Election District	*	OFFICE OF
7 th Council District		
John M. & Adrian Goodman	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
Petitioners	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0017-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 John M. & Adrian M. Goodman, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to approve an undersized lot.

John Goodman and David Billingsley appeared in support of the petition. Two neighbors attended the hearing to express concerns with storm water drainage from the site. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Environmental Protection and Sustainability (DEPS), indicating Petitioners must comply with the Critical Area regulations. A site plan was marked and admitted as Petitioners’ Exhibit 1.

The subject property is approximately 0.173 acres in size and zoned DR 5.5. The lot was created in 1924 upon the filing of the plat of Lodge Forest. Exhibit 4. The lot is unimproved and Petitioners propose to construct a single family dwelling on the property. The proposed dwelling would have sufficient front, rear and side yard setbacks that comply with the B.C.Z.R. The only deficiency is the width of the lot: this lot is 50 ft. wide while the DR 5.5 regulations require 55 ft.

In terms of drainage from the site, Mr. Billingsley stated final permits would not be issued by Baltimore County unless Petitioners can demonstrate they are not increasing the flow or volume of surface water onto neighboring properties. Norman Anderson (who would construct the proposed dwelling) testified he would create berms or swales at the site to ensure water is not discharged onto neighboring lots.

The sole zoning request is pursuant to 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.

As noted above, the lot was created by plat in 1924 and all yard setbacks and height requirements are satisfied. As such, I believe B.C.Z.R. §304.1.A & B are satisfied. Also, the Petitioner does not own any land adjacent to or near this lot, so B.C.Z.R. §304.1.C is also satisfied. This regulation is designed to allow owners to construct a dwelling on a lot of record that does not meet the current lot width requirements. Based on the aerial photo (Exhibit 5) it would appear many homes in the area are situated on 50 ft. wide lots. As such I also believe the proposed

dwelling would be appropriate and compatible with the neighborhood and the request will be granted.

THEREFORE, IT IS ORDERED this 13th day of **September, 2017** by this Administrative Law Judge, that the Petition for Special Hearing to approve an undersized lot pursuant to B.C.Z.R. §304, 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 satisfy critical area regulations.
3. Petitioners must obtain approval from DEPS to remove the large tree on the lot.

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