

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(4204 Louisa Avenue)	*	OFFICE OF
11 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
TYKA Building Group, LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2018-0091-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 TYKA Building Group, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve an undersized lot. A Petition for Variance seeks: (1) to permit existing Parcel 2 with a lot width of 50 ft. in lieu of the minimum required 150 ft.; (2) to permit a side yard setback of 10 ft. on each side with a sum of 20 ft. of both sides in lieu of the minimum required 20 ft. side yard and sum of sides of 50 ft.; and (3) to permit a front yard setback of 49 ft. in lieu of the required 50 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Thomas and Linda Larkin and surveyor J. Scott Dallas 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 B.C.Z.R. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency opposed the request.

SPECIAL HEARING

This case is related to and was combined for hearing with Case No. 2018-0092-SPHA, which concerns the adjoining lot. These are unusual cases in that they concern the consequences of the

2016 Comprehensive Zoning Map Process (“CZMP”). As stated in the Petition: “Site was rezoned from R.O. to D.R. 1. R.O. would have allowed the proposed dwelling.” While it is not unprecedented for a property to be “downzoned,” the specific circumstances here, coupled with the rather draconian effect of the rezoning, entitles Petitioner to relief.

Petitioner purchased the property in February 2016, at which time it was zoned R.O. The parcel in this case (identified on the plan as Parcel 2) contains 7,494 sq. ft. of land, and Petitioner proposes to construct a 50’ x 30’ dwelling thereon. This property was included within Issue No. 5-044 in the 2016 CZMP.

Issue 5-044 involved 23 acres of land, 1.39 acres of which were zoned R.O. *See* Log of Issues, Pet. Ex. No. 2. The majority of the land (i.e., 21.5 +/- acres) was originally zoned D.R. 5.5 and B.R., and much of it is owned by the State of Maryland. While the Planning Board recommended the zoning remain unchanged, the County Council rezoned the D.R. 5.5 and R.O. land (totaling approximately 13 acres) to D.R. 1 and--in the case of the State-owned land--D.R. 1 NC.

As concerns the rezoning, the notice required by law (BCC §32-3-215(c)) which was mailed to the prior owner (from whom Petitioner purchased the property) was defective. *See* Pet. Ex. No. 3. Instead of notifying the owner her property was proposed to be rezoned to D.R. 1, the notice indicated the County Council requested the R.O. designation of the 1.39 acres of land to remain unchanged. Petitioner also spoke with a neighbor who lives at 4206 Louisa Avenue and he indicated the subject property was never posted with a notice or sign regarding the CZMP issue, as required by BCC §32-3-215(a).

In these circumstances I do not believe the property was lawfully rezoned, and for purposes of this case I will consider the property to be zoned R.O., as it was prior to the 2016 CZMP. In doing so I am mindful of Code section 32-3-215(f), which states that the failure to post the

property or mail the notice “does not invalidate or affect any subsequent change in the zoning of the subject property.” Whether that provision is constitutional on its face is a fair question, but I do not believe it can be applied lawfully in the circumstances of this case.

Here the Petitioner’s property was rezoned from R.O. to D.R.1, a designation which prevents a dwelling from being constructed on the lot. The rezoning has arguably rendered the property worthless, which would constitute a “taking.” A deprivation of life, liberty or property must be “preceded by notice and opportunity for hearing.” *Cleveland Bd. Of Educ. V. Loudermill*, 470 U.S. 532, 542 (1985).

As Mr. Dallas explained, if this lot retained the R.O. zoning (which allows uses permitted by right “and as limited in D.R. 5.5 Zones” per B.C.Z.R. §204.3), a dwelling could be constructed pursuant to the Undersized Single-Family Lots regulation in B.C.Z.R. §304; variances would not be needed. The only deficiency would be lot width (i.e., 50 ft. in lieu of the required 55). The lot size and proposed setbacks would comply with R.O./D.R. 5.5 requirements. B.C.Z.R. §1B02.3.C. In light of the flawed rezoning procedure, I believe Petitioner should be permitted as an aspect of special hearing relief to construct a single-family dwelling on the subject property.

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 parcel in question is rectangular and does not appear to be dissimilar to surrounding properties. In addition, Petitioner did not present any evidence or argument concerning the uniqueness of the property. As such the petition for variance will be denied.

THEREFORE, IT IS ORDERED this 8th day of **November, 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 approve an undersized lot (i.e., lot width of 50’ in lieu of the required 55’), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking: (1) to permit existing Parcel 2 with a lot width of 50 ft. in lieu of the minimum required 150 ft.; (2) to permit a side yard setback of 10 ft. on each side with a sum of 20 ft. of both sides in lieu of the minimum required 20 ft. side yard and sum of sides of 50 ft.; and (3) to permit a front yard setback of 49 ft. in lieu of the required 50 ft., be and is hereby DENIED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its 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, Petitioner 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.

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

JEB:sln