

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(4202 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. 2018-0092-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 1 with a lot width of 92.48 ft. in lieu of the minimum required 150 ft.; (2) to permit a side yard setback of 10 ft. with a sum of 42 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 38 ft. and a rear yard setback of 30 ft. in lieu of the required 50 ft., respectively. 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 Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP). That agency opposed the request.

SPECIAL HEARING

This is a companion case to No. 2018-0091-SPHA, and involves a 9,070 sq. ft. parcel of land near the intersection of Belair Road and Louisa Avenue. A dwelling existed on the property many years ago but the lot is presently unimproved. Petitioner proposes to construct a 30'x 50' single-family dwelling on the property. As noted in the order in Case No. 2018-0091-SPHA, this property was downzoned from R.O to D.R. 1 during the 2016 Comprehensive Zoning Map Process (CZMP). As discussed below, I do not believe the property is unique, and therefore variance relief cannot be granted.

But at the same time I believe the rezoning process was defective, and special hearing relief will be granted to allow a dwelling to be constructed on the lot. A more complete discussion of this issue can be found in the Order in Case No. 2018-0091-SPHA. If the property had not been rezoned, Petitioner would be entitled to construct a single-family dwelling on this lot without zoning relief. The lot width, area and proposed setbacks as shown on the site plan would comply with the R.O./D.R. 5.5 requirements. B.C.Z.R. §1B02.3.C.

VARIANCE

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 lot in question is essentially square and it does not appear to have any unusual or defining characteristics which make it unlike neighboring properties. As such the petition for variance must 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 the construction of a single-family dwelling on the subject property, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking: (1) to permit existing Parcel 1 with a lot width of 92.48 ft. in lieu of the minimum required 150 ft.; (2) to permit a side yard setback of 10 ft. with a sum of 42 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 38 ft. and a rear yard setback of 30 ft. in lieu of the required 50 ft., respectively, 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