

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(1721 Edmondson Avenue)	*	OFFICE OF
1 st Election District		
1 st Council District	*	ADMINISTRATIVE HEARINGS
Patrick & Deborah Svehla	*	FOR BALTIMORE COUNTY
Legal Owners		
	*	Case No. 2018-0165-SPHA
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 Patrick & Deborah Svehla, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to amend the prior Order dated October 2, 1961 and site plan in Case # R-1961-5360 to eliminate the proposed commercial parking lot containing 24 parking spaces (that was never constructed) and replace it with a single family dwelling; (2) to approve a lot line adjustment between the commercial building and the new dwelling; (3) to approve a 6,000 sq. ft. residential lot that is split-zoned RO with a portion of DR 2; and (4) to approve a modified parking plan to allow 2 parking spaces in lieu of the required 6 spaces.

In addition, a petition for variance seeks the following: (1) to permit a front yard setback for a new dwelling of 20 ft. and a rear yards setback of 15 ft. in lieu of the required 25 ft. and 30 ft. respectively; (2) to allow 2 parking spaces in lieu of the required 6 for an office building; and (3) to approve a 19.5 ft. setback to a rear property line in lieu of the required 30 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Craig Rodgers and Patrick Svehla appeared in support of the requests. Timothy M. Kotroco, Esq. represented Petitioners. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning

Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). The DOP objected to the requests, and its comment is discussed in greater detail below. DPR required the plan to be amended to show the driveway and parking spaces for the proposed residence, and Mr. Rodgers made redline changes on the plan to provide that information. Ex. 8.

SPECIAL HEARING

The special hearing request seeking to amend the 1961 zoning order is essentially a housekeeping matter which is routinely approved in cases such as this. That order permitted the owner to construct a 24-space commercial parking lot on the property. Ex. 2. Petitioners do not want to construct the parking lot and the special hearing request seeks to amend that order and vacate the relief granted therein. The second special hearing request, concerning the lot line adjustment, is a matter that must be handled by the DRC rather than the OAH.

The third request concerns approval of a 6,000 sq. ft. lot that is split-zoned R.O. and D.R. 2. This request presupposes the DRC approves the lot line adjustment, which would result in two parcels of roughly equal size. The parcel with the existing structure used as an office by Petitioner (who is a CPA) would be reduced in size while the parcel with the proposed dwelling would be enlarged to 6,020 SF. The two separate parcels are individually described in a deed recorded in 1952. Ex. 6. Since this was prior to the adoption of the 1955 zoning regulations, they are “lots of record” under B.C.Z.R. §101.1, even though the subject lot is undersized due to the D.R. 2 split-zoning.

The proposed dwelling would be located in the R.O. zone, and Petitioners satisfy the 6,000 sq. ft. minimum lot size for the R.O./D.R. 5.5 zone, assuming the area of the small sliver of D.R. 2 zoned property is included in the calculation. Though the regulation is not entirely clear, it would appear the B.C.Z.R. does not allow the areas in different zones to be aggregated in determining

lot density. B.C.Z.R. §1B01.2.A.2. In scenarios like this where a zone line on a small parcel does not coincide with a property boundary I believe a density anomaly exists, entitling the owner to include in the lot area calculation all property within the lot boundary, even though it may be split-zoned. *See* Case No. 2016-0275-SPH. As such the third special hearing request will be granted.

The final special hearing request concerns a modified parking plan, which will instead be considered as a variance request.

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 property is narrow and deep and is therefore unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to construct a single family dwelling on the lot. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the lack of community opposition.

In its ZAC comment opposing the requests the DOP cited a section of Master Plan 2020 concerning community conservation areas. As an initial matter, I believe it would be hard to apply the master plan (which views the County from a macroscopic perspective) with any precision in an individual zoning case, especially where, as here, the land area involved is approximately ¼ acre. But in any event, I respectfully disagree with the DOP the parking lot (which has not been constructed even though it was approved 57 years ago) would serve as a “buffer” for the adjacent

residential community. Instead, I believe the community will benefit from the elimination of the 24 space parking lot, which would if constructed constitute commercial encroachment upon the homes on Edgewood Avenue.

THEREFORE, IT IS ORDERED this 5th day of **March, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to amend the prior Order dated October 2, 1961 and site plan in Case # R-1961-5360 to eliminate the proposed commercial parking lot containing 24 parking spaces (that was never constructed) and replace it with a single family dwelling; and (2) to approve a 6,000 sq. ft. residential lot that is split-zoned RO with a portion of DR 2, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance (1) to permit a front yard setback for a new dwelling of 20 ft. and a rear yards setback of 15 ft. in lieu of the required 25 ft. and 30 ft. respectively; (2) to allow 2 parking spaces in lieu of the required 6 for an office building; and (3) to approve a 19.5 ft. setback to a rear property line in lieu of the required 30 ft., 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.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln