

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(1035 Cedar Creek Road)	*	OFFICE OF
15 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
David Lee Harris	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2018-0177-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 David Lee Harris, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a single-family dwelling on an undersized lot in an RC5 zone.

A petition for variance seeks to permit a proposed single family dwelling with a side yard setback of 17 ft. and center line of street setbacks of 69 ft. and 29 ft. in lieu of the required 50 ft., 75 ft. and 75 ft., respectively. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

David Lee Harris and professional engineer William Bafitis 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. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”).

SPECIAL HEARING

As noted above this property is zoned RC-5. The Regulations for that zone contain a unique provision which allows an owner to request a special hearing (rather than a variance) for approval of a building lot which does not satisfy the minimum 1.5 acre lot size. B.C.Z.R. §1A04.3.B.1.b.(1). The proposed site is 11,250 square feet in size which, though it falls short of the RC 5 requirements, would easily satisfy the 6,000 sq. ft. minimum lot size in a DR 5.5 zone. In many cases involving sites such as this in eastern Baltimore County owners and engineers have explained that in reality the pattern and scale of development in these areas equates to a DR 5.5 zone rather than RC-5. In addition, Petitioner also submitted letters of support (Exhibit 2) from several neighbors indicating their support for the request. As such, I do not believe granting the request would have any detrimental impact upon the community.

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).

These lots were created by a plat recorded long before adoption of the B.C.Z.R. and the property is therefore unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be unable to construct the proposed dwelling. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of County and/or community opposition.

THEREFORE, IT IS ORDERED this 9th 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 (“B.C.Z.R”) to approve a single-family dwelling on an undersized lot (i.e., 11,250 SF) in lieu of the minimum required 1.5 acres, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a proposed single-family dwelling with side yard setbacks of 17 ft. and center line of street setbacks of 69 ft. and 29 ft. in lieu of the required 50 ft., 75 ft. and 75 ft., respectively, be and is hereby GRANTED.

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 his 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
2. Prior to issuance of permits Petitioner must comply with the Chesapeake Bay Critical Area Regulations.
3. Prior to issuance of permits Petitioner must obtain from the DOP a positive finding the RC-5 performance standards have been satisfied.

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