

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(5219 Forge Road)		
11 th Election District	*	OFFICE OF
5 th Council District		
Sharon K. Hall	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0201-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 Sharon K. Hall, legal owner (“Petitioner”). The Special Hearing was 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 an undersized lot (14,467 sq. ft. in lieu of the required 20,000 sq. ft.) pursuant to Section 304 of the B.C.Z.R.

Sharon Hall and professional engineer William Bafitis appeared in support of the petition. Timothy M. Kotroco, Esq., represented the Petitioner. Several neighbors attended the hearing and opposed the request. 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 indicated it had “no objection to granting the petitioned zoning relief.” A site plan was marked and admitted as Petitioner’s Exhibit 1.

It is important to note at the outset this is not a variance case; the only request is for a special hearing. This is more than a matter of semantics. Unlike a variance request under B.C.Z.R. §307, a special hearing request to approve an undersized lot under B.C.Z.R. §304 does not require Petitioner to show her property is unique in any way or that she would experience a practical difficulty or hardship if this request was denied. A neighbor referred to a previous zoning order

issued by the undersigned (Case No. 2017-0313-A) concerning another property in this community wherein the request was denied. That was a variance case, and the petition was denied because the property was determined not be unique. In this case, Petitioner does not need to show her property is unique.

Instead, and as discussed at the hearing, B.C.Z.R. §304 (entitled “Use of Undersized Single-Family Lots”) was designed to address the scenario in this case; i.e., where a lot of record, by virtue of a subsequent down-zoning, becomes undersized or deficient, preventing the owner from erecting a house thereon. In *Mueller v. People’s Counsel*, 177 Md. App. 43 (2007), the court of special appeals described the two methods by which an owner in Baltimore County may receive permission to construct a dwelling on an undersized lot: B.C.Z.R. §307 (Variances), which requires a showing of uniqueness and practical difficulty, and B.C.Z.R. §304, which does not. *Id.* at 87.

Based on the testimony and exhibits presented at the hearing I believe Petitioner satisfies each of the three requirements enumerated in B.C.Z.R. §304, although I believe the last element merits further discussion. First, the two lots owned by Petitioner were created by a subdivision plat recorded before 1955. Pet. Ex. 3. Second, all other height and area requirements (i.e., other than lot size) are satisfied, and Petitioner is not requesting any variances for yard setbacks or height of any proposed dwelling. Finally, I do not believe Petitioner owns sufficient adjoining land to comply with the lot area requirement.

Jack Amhrein, on behalf of the Perry Hall Improvement Association, noted Petitioner could relocate the property boundary in such a fashion that the building lot would be larger than 14,467 sq. ft. as proposed. I agree, and while I am cognizant of Petitioner’s desire to continue using the pool in the rear of her home, I believe (as noted by several of the neighbors) that the pool may

have to be removed or relocated to allow for a larger lot size. Petitioner submitted an exhibit (Pet. Ex. 9) showing at least 25 homes in the community are constructed on lots less than 20,000 sq. ft. in size, although as the neighbors point out only two of those homes were constructed within the last twenty-five years when the current zoning regulations were in place. Even so, only five of the lots shown on Exhibit 9 are larger than 16,000 sq. ft., and a restriction will be included below to require the building lot in this case to be no smaller than that.

There are also significant factual distinctions between this case and the 2017 zoning case referenced above where the variance petition was denied. The petitioner in that case, Wadkins Construction, Inc., purchased the property at 5301 Bush Street on October 28, 2016, and filed the variance petition immediately thereafter. Ms. Hall, the petitioner in this case, has owned and lived at this property for over 40 years, and testified she will continue to live in her home.

THEREFORE, IT IS ORDERED this 21st day of **March, 2018** by this Administrative Law Judge, that the Petition for Special Hearing to approve the construction of a single-family dwelling on an undersized lot (16,000 sq. ft. in lieu of the required 20,000 sq. ft.) pursuant to Section 304 of the B.C.Z.R., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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 her 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. Petitioner shall within 30 days of the date hereof submit to the Office of Administrative Hearings a redlined site plan showing a reconfiguration of the proposed “new lot line” which will result in an undersized lot of not less than 16,000 sq. ft.

3. Petitioner must obtain approval from the Baltimore County Development Review Committee (DRC) of a lot line adjustment as proposed on the site plan, pursuant to BCC §32-4-106(a)(1)(viii).
4. Prior to issuance of permits Petitioner must submit for approval to the DOP building elevations of the proposed dwelling.

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