

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(7917 Elmhurst Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Likainvest, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	CASE NO. 2019-0048-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Likainvest, LLC, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief pursuant to the Baltimore County Zoning Regulations (“BCZR”) to permit a minimum lot width for an existing recorded lot of 50 ft. in lieu of the required 55 ft. A site plan was marked as Petitioner’s Exhibit 1.

Surveyor Bruce Doak appeared in support of the petition. Nicole M. Folks, Esq. represented Petitioner. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. While there was some disagreement on the point, the Department of Environmental Protection and Sustainability (DEPS) noted in its Zoning Advisory Committee (ZAC) comment and in subsequent correspondence the property is within the critical area, and that Petitioner must comply with CBCA regulations.

The site is approximately 13,152 sq. ft. in size and zoned DR 5.5. The property is unimproved and is shown as Lot No. 111 on the plat of Rosedale Terrace, recorded in 1910. Pet. Ex. 2. Petitioner would like to construct a single-family dwelling on the lot although zoning relief is required since the minimum lot width in the DR 5.5 zone is 55 ft. The subject property exceeds the 6,000 sq. ft. minimum lot size requirement in the DR 5.5 zone; the only deficiency is lot

width.

As discussed at the hearing, I believe this case is more appropriately resolved under BCZR Section 304, which (unlike Section 307) does not require a showing of uniqueness or practical difficulty. *Mueller v. People's Counsel*, 177 Md. App. 43 (2007) (discussing application of BCZR §304). The Petitioner satisfies each of the requirements set forth at BCZR Section 304.1:

1. The lot was created long before 1955;
2. The proposed dwelling would be constructed in compliance with the setback, height and area requirements of the DR 5.5 regulations; and
3. The owner does not own sufficient adjoining land to satisfy the lot width requirement.

While it is true Petitioner also owns the adjoining property at 7915 Elmhurst Ave., (shown as Lot No. 89D on the plat of Rosedale Terrace), that lot is also just 50 ft. wide and is improved with a single-family dwelling. This was exactly the same scenario at issue in *Mueller*, where the court of special appeals confirmed that such an owner could not “borrow” any land from his adjacent lot lest he render that property deficient (or, as in this case, further deficient) under the lot width or area requirements. *Id.* Most of the homes adjacent to the subject property are situated on 50 ft. wide lots, and thus I believe the proposed dwelling would be “appropriate” and compatible with the pattern of the neighborhood pursuant to BCZR §304.4.

THEREFORE, IT IS ORDERED, this 31st day of **October, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing to approve an undersized building lot 50 ft. wide in accordance with BCZR §304, 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 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