

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(7606 Riddle Avenue)		
12 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Michael Scott Mioduszewski	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0127-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Michael Scott Mioduszewski, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit an undersized lot (4,000 sq. ft. in lieu of the required 6,000 sq. ft.) to be improved with a dwelling with a lot width of 40 ft. in lieu the required 55 ft. and side yard setbacks of 5 ft. in lieu of the required 10 ft. A site plan was marked as Petitioner’s Exhibit 1.

Michael Mioduszewski appeared in support of the petition. Several neighbors opposed the request. The Petition was advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee (“ZAC”) comments were received from any of the reviewing county agencies.

The site is approximately 4,000 square feet in size and is zoned DR 5.5. The property is comprised of two lots, each measuring 20' x 100'. The property is improved with a single-family dwelling constructed in 1922. Petitioner proposes to raze that dwelling and construct in its place a new single-family dwelling.

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).

Although the Petitioner described the improvements planned for the site, no testimony or evidence was presented which would tend to show the property is unique as that term is used in Maryland law. Based on the aerial photography in the case file, it appears the lots are similar in size, shape and topography to the vast majority of other properties in this community. As such the variance request under BCZR Section 307.1 must be denied. *Cromwell*, 102 Md. App. at 699 (variances should be granted “sparingly” since it is “an authorization for [that] ...which is prohibited by a zoning ordinance”).

The zoning petition also references BCZR Section 304.1. This provision is entitled “Use of Undersized Single-Family Lots” and does not require a showing of uniqueness or practical difficulty, as is required in a variance case under BCZR Section 307. *Mueller v. People’s Counsel*, 177 Md. App. 43 (2007). That regulation permits a single-family dwelling to be constructed on a lot which is deficient in area and/or width only. A side yard setback variance cannot be granted in connection with a request under this section. That means, as Petitioner noted during the hearing, it would be permissible to construct a new single-family dwelling on this property provided all other height and area regulations, including the 10 ft. side yard requirements, were satisfied. BCZR §304.1.B. Given the 40 ft. lot width, any such dwelling would need to be no wider than 20 feet.

THEREFORE, IT IS ORDERED, this **31st** day of **December, 2018**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance to permit an undersized lot (4,000 sq. ft. in lieu of the required 6,000 sq. ft.) to be improved with a dwelling with a lot width of 40 ft.

in lieu the required 55 ft. and side yard setbacks of 5 ft. in lieu of the required 10 ft., be and is hereby DENIED.

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