

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(7608 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. 2019-0128-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'. At present the subject property is unimproved. Petitioner proposes to construct a single-family dwelling on the property and requests variance relief to do so.

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).

No testimony or evidence was presented which would tend to prove the subject property is unique as that term is used in Maryland law. In fact, the two lots are the same shape and size as nearly all of the other lots in this community. In a contested variance case, the petitioner faces an uphill battle. Maryland's appellate courts have not in the last 25 years upheld a zoning board's grant of a variance or reversed a zoning board's denial of a variance. This is because such relief should be granted "sparingly" since it is "an authorization for [that] ...which is prohibited by a zoning ordinance." *Cromwell*, 102 Md. App. at 699. As such the petition for variance must be denied.

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