

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(6403 Sherwood Road)	*	OFFICE OF
9 th Election District		
5 th Council District	*	ADMINISTRATIVE HEARINGS
Nadia Elias	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2019-0151-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 Nadia Elias, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to approve the subject property as an undersized lot having a width at the building line of 50' in lieu of the 55' required to be improved with a single family dwelling which complies with all other height and area requirements; and (2) for approval of the proposed building, parking areas and uses as shown on the plan which accompanied this petition.

In the alternative, a Petition for Variance was filed pursuant to Sections 1B02.3.A.5.B and C.1 of the BCZR seeking relief as follows: (1) to permit an existing lot of record, platted in 1927, to have a width at the building line of 50' in lieu of the 55' required; and (2) for approval of the proposed buildings, uses and conditions as shown on the plan which accompanied this petition. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Professional engineer John Motsco appeared in support of the requests. Howard L. Alderman, Esquire represented the Petitioner. Numerous members of the community opposed the requests. The Petition was advertised and posted as required by the BCZR. A substantive Zoning

Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency opposed the request.

SPECIAL HEARING

The Special Hearing request seeks approval to construct a single family dwelling pursuant to the undersized lot regulation, which provides in pertinent part as follows:

“Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations in these regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
- B. All other requirements of the height and area regulations are complied with; and
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.”

BCZR Section 304.1

In addition, the BCZR requires the Administrative Law Judge to determine “whether the proposed dwelling is appropriate.” BCZR Section 304.4.

Mr. Motsco opined Petitioner satisfied the requirements of Section 304.1, and documents were submitted to support that testimony. The court of special appeals has made clear Section 304.1 is an alternative method (the other being a variance request under BCZR Section 307) of obtaining approval to build a single family dwelling on an undersized lot. *Mueller v. People’s Counsel*, 177 Md. App. 43 (2007). In a case under Section 304.1, the petitioner does not need to prove uniqueness or practical difficulty. *Id.*

But the decisive point is whether the “proposed dwelling is appropriate,” and in this case I do not believe it is. As members of the community noted, the home at 6401 Sherwood Road is approximately 1,900 sq. ft. (counting the basement) while the proposed home would be more than

twice that size (i.e., 3,940 sq. ft.). While that might not present an issue in a DR 3.5 zone with larger lot sizes, the juxtaposition of the proposed two-story home with the existing one-story dwelling on these narrow lots would in my opinion render them incompatible. As such, I do not believe the proposed single family dwelling would be appropriate.

There is also the issue of zoning merger. Under that doctrine, adjacent lots may merge for zoning purposes when the common owner uses one lot in service to the other lot. Ridge v. BGE, 352 Md. 645 (1999). In Remes v. Montg. Co., 387 Md. 52 (2005) the court of appeals held that adjacent lots had merger where (among other things) a driveway traversed both lots and where the lots were assessed for tax purposes as a single parcel. Id. at 68. In this case, the driveway shown on the plan in fact traverses both lots and the State Department of Assessments and Taxation (“SDAT”) assessed the property as a single tax parcel. As such, I believe these adjacent lots have merged for zoning purposes, which is another reason the proposed single family dwelling would not be “appropriate.”

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).

Based on the testimony and exhibits submitted by Petitioner, I do not believe the physical characteristics of the subject property render it “unique” as that term is used in Cromwell. The lot is similar in size and shape to many of the other lots in the Idlewyld community. No evidence was presented to show the property had topographical and/or environmental features not found on

nearby properties. As such, I do not believe Petitioner has satisfied the stringent test for variance relief. *Cromwell*, 102 Md. App. at 699 (variance should be granted “sparingly” since it is “an authorization for that ... which is prohibited by a zoning ordinance”).

THEREFORE, IT IS ORDERED this **11th** day of **January, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief from Section 500.7 of the BCZR as follows: (1) to approve the subject property as an undersized lot having a width at the building line of 50' in lieu of the 55' required to be improved with a single family dwelling which complies with all other height and area requirements; and (2) for approval of the proposed building, parking areas and uses as shown on the plan which accompanied this petition, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Sections 1B02.3.A.5.B and C.1 of the BCZR as follows: (1) to permit an existing lot of record, platted in 1927, to have a width at the building line of 50' in lieu of the 55' required; and (2) for approval of the proposed buildings, uses and conditions as shown on the plan which accompanied this petition, 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:dlw