

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(#81 Rossville Blvd.) *	OFFICE OF
14 th Election District	
6 th Council District *	ADMINISTRATIVE HEARINGS
Chioma Agwu, <i>Legal Owner</i>	
	FOR BALTIMORE COUNTY
Petitioner *	Case No. 2019-0174-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 Chioma Agwu, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to confirm an existing lot under 10,000 sq. ft. in area does not affect neighboring lot density. In addition, a Petition for Variance was filed pursuant to BCZR Section 1B02.3.C.1 as follows: (1) to allow a sum of side yard setbacks of 20 ft. in lieu of the required 25 ft.; (2) lot width of 50 ft. in lieu of the required 70 ft.; and (3) to permit an existing lot with a lot size of 8,451 sq. ft. in lieu of the required 10,000 sq. ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Agwu Chioma and professional engineer Mostafa Izadi appeared in support of the requests. There were no protestants or interested citizens in attendance. 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.

SPECIAL HEARING

The Special Hearing request seeks a determination that granting the zoning relief requested will not “affect neighboring lot density.” The property is zoned DR 3.5, which of course

would permit 3.5 single-family dwellings per acre. BCZR §1B02.2.A. The existing lot (known as Lot 81) which was created by the Plat of Gum Spring Farm (Ex. No. 2) recorded in 1925, is 8,451 sq. ft. in size, which is just 15% less than the 10,000 sq. ft. minimum lot size required under the current regulations. Based on a review of the plat it appears several of the lots adjoining the subject property are unimproved, and thus I believe sufficient density exists to construct the dwelling.

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).

The property is narrow and deep and is therefore unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because she would be unable to construct a single-family dwelling on the lot she recently purchased for that purpose. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the lack of County agency opposition.

A letter of opposition dated February 18, 2019 was filed by Mrs. Barnes, who indicates she is a “neighbor behind Lot 81.” Mrs. Barnes expressed concern that the “proposed yard setback would result in an encroachment on our land.” Based on a review of the site plan prepared and sealed by Mr. Izadi, the dwelling located to the rear (south) of the subject property is 7504 Perryspring Way, owned by Aurora and Roderick Roasa. Mrs. Barnes would appear to own the house next door at 7502 Perryspring Way. In any event, the zoning relief requested concerns side

yard setbacks, and the rear yard setback from the proposed dwelling (where the subject property adjoins the homes on Perryspring Way) will be far in excess of the 30 ft. required by the DR 3.5 regulations.

In its ZAC comment the DOP raised an issue concerning ingress and egress from the site. This is a valid point, especially since the property boundary shown on the site plan does not appear to adjoin Rossville Boulevard. Mr. Izadi indicated he was aware of the issue, and stated the Petitioner did not want to have a survey performed without first obtaining the necessary zoning relief. Mr. Izadi stated the Petitioner was going to have the property surveyed in the near future, and he anticipates the lot will have legal access to the highway.

THEREFORE, IT IS ORDERED this 25th day of **February, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief from Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to confirm an existing lot under 10,000 sq. ft. in area does not affect neighboring lot density, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from BCZR Section 1B02.3.C.1 as follows: (1) to allow a sum of side yard setbacks of 20 ft. in lieu of the required 25 ft.; (2) to allow a lot width of 50 ft. in lieu of the required 70 ft.; and (3) to permit an existing lot with a lot size of 8,451 sq. ft. in lieu of the required 10,000 sq. ft., 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 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.

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