

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(2809 Alabama Avenue)		
13 th Election District	*	OF ADMINISTRATIVE
1 st Council District		
Doreen Lucke	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0176-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Doreen Lucke, 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 a proposed single-family dwelling on a lot 40 ft. wide with an area of 5,000 sq. ft. in lieu of the required 55 ft. and 6,000 sq. ft. A site plan was marked as Petitioner’s Exhibit 1.

Doreen Lucke appeared in support of the petition. Alan Fink, Esquire represented Petitioner. There were no protestants or interested citizens in attendance. 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 did not oppose the request.

The site is approximately 5,000 sq. ft. in size and is zoned DR 5.5. The property is unimproved and is comprised of two lots (Nos. 15 & 16) as shown on the Plat of Rosemont. Petitioner proposes to construct a dwelling on the property although zoning relief is required to do so. As noted in the companion case (No. 2019-0175-A), I believe Petitioner would be entitled to construct a dwelling on the property pursuant to BCZR Section 304, which concerns

undersized lots. Even so, the petition seeks variance relief and the order below will therefore address only that issue.

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 property. 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 absence of County and/or community opposition. As Petitioner noted at the hearing (and several SDAT records were submitted to support the proposition) many homes in the area are constructed on 40 ft. wide lots with an area of 5,000 sq. ft. As such I believe the proposed single-family dwelling would be compatible with the neighborhood.

THEREFORE, IT IS ORDERED, this 26th day of **February, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit construction of a proposed single-family dwelling on a lot 40 ft. wide with an area of 5,000 sq. ft. in lieu of the required 55 ft. and 6,000 sq. ft. respectively, 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.
2. Petitioner must submit for approval by the DOP at the time of permit application elevations of the proposed dwelling.

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