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| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| (2507 Island View Road) | * | OFFICE OF |
| 15 th Election District | | |
| 7 th Council District | * | ADMINISTRATIVE HEARINGS |
| Albert Kirchmayr, <i>Legal Owner</i> | * | FOR BALTIMORE COUNTY |
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| Petitioner | * | Case No. 2019-0224-SPHA |
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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 Albert Kirchmayr, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Sections 1A04.3.B.1.b.(1) and 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to allow an existing building/dwelling to remain on an RC 5 Lot of 9,250 sq. ft. in lieu of the 1.5 acre, with existing side yard setbacks of 4 ft., 3 in. & 15 ft., 7 in. and a rear yard setback of 41 ft. all in lieu of the required 50 ft. setback with a lot coverage of 20% in lieu of the permitted 15%. In the alternative, a Petition for Variance was filed pursuant to BCZR Sections 307, 1A04.3.B.2.b and 1A04.3.B.3 seeking the same relief. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Albert Kirchmayr and Craig Rogers appeared in support of the requests. Timothy M. Kotroco, Esq. 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 Department of Environmental Protection and Sustainability (“DEPS”), indicating Petitioner must comply with the critical area regulations.

SPECIAL HEARING

The subject property (9,250 sq. ft. in size) is zoned RC-5 and improved with a 1,320 sq. ft. dwelling/garage structure. The RC-5 zone is unique in that the regulations contain a provision for approving via special hearing a lot that does not satisfy the zone's minimum lot size (i.e., 1.5 acres) or setbacks. In other zones these would be considered variance requests, and Petitioner has requested special hearing and variance relief as alternative theories. Since the special hearing does not require a showing of uniqueness and hardship (as is required under BCZR §307), I believe the special hearing request is appropriate in this scenario.

Most importantly, the 2-story structure (which functions as a garage with living quarters on the second floor) was constructed many years ago and the deficient setbacks and lot size are therefore pre-existing and lawfully nonconforming. Petitioner is not proposing at this time to construct any additional buildings or improvements, with the exception of replacing the roof on the existing structure. The subject property is shown as Lot 31 on the plat of Barrison Point, recorded in 1926. Pet. Ex. 3. The RC-5 zoning was applied to the property long after the lot was created, and thus I believe the petition should be granted.

THEREFORE, IT IS ORDERED this 12th day of **April, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to Section 1A04.3.B.1.b.(1) of the BCZR to allow an existing building/dwelling to remain on an RC-5 Lot of 9,250 sq. ft. in lieu of the 1.5 acres, with existing side yard setbacks of 4 ft., 3 in. & 15 ft., 7 in. and a rear yard setback of 41 ft., all in lieu of the required 50 ft. setback with a lot coverage of 20% in lieu of the permitted 15%, 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 his 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. Prior to issuance of permits Petitioner must comply with critical area regulations.

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