

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(7520 Avondale Avenue)		
12 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
James & Verna Jones	*	HEARINGS FOR
<i>Legal Owners</i>		
Krystyna Osowski	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2019-0234-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by James and Verna Jones, legal owners of the subject property and Krystyna Osowski, contract purchaser (“Petitioners”). Petitioners are requesting variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”): (1) to allow a dwelling with a side yard setback of 5 ft. in lieu of the required 10 ft. and a street-side setback of 10 ft. in lieu of the required 25 ft.; (2) to allow a lot width of 45 ft. in lieu of 55 ft.; and (3) to allow an area of 5,111 sq. ft. in lieu of 6,000 sq. ft. A site plan was marked as Petitioners’ Exhibit 1.

James Jones appeared in support of the petition. Two neighbors opposed the request. 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”).

The site is approximately 5,111 sq. ft. in size and is zoned DR 5.5. The property is unimproved and Petitioners propose to construct a single family dwelling (30’ x 44’) on the lots. Two neighbors opposed the requests and expressed concern with traffic safety (especially for fire trucks and other emergency vehicles) and stormwater drainage issues.

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 a review of the site plan (Petitioners' Exhibit 1), it appears as if the subject property is very similar to other lots in the neighborhood in terms of size and lot dimensions. No evidence was presented to show the lots are unique in a zoning sense, and the petition must therefore be denied. Maryland courts have made clear variances can only be granted "sparingly," since it is an "authorization for [that] ... which is prohibited by a zoning ordinance." Cromwell, 102 Md. App. at 699.

I am mindful of the fact Mr. Jones has owned the property for more than 60 years, and I regret that I cannot accommodate his request. But I am obligated to resolve cases based on the facts and the law, and not on whether I believe it would be equitable to approve the petition. For what it is worth, the state tax records reflect a nominal \$1,000 assessed value for the land, which is at least some indication this is not a buildable lot.

THEREFORE, IT IS ORDERED, this **16th** day of **April, 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"): (1) to allow a dwelling with a side yard setback of 5 ft. in lieu of the required 10 ft., and a street-side setback of 10 ft. in lieu of the required 25 ft.; (2) to allow a lot width of 45 ft. in lieu of 55 ft.; and (3) to allow an area of 5,111 sq. ft. in lieu of 6,000 sq. 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:dlw