

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
(7224 Holabird Avenue)		
12 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
Delmaris, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Mason Properties	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	<b>CASE NO. 2019-0241-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Delmaris, LLC, legal owner, and Mason Properties, contract purchaser of the subject property (“Petitioners”). The Petitioners are requesting variance relief from Sections 202.3.A.1 and 1B02.1.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a dwelling on an undersized lot of 6,842 sq. ft. in lieu of the required 10,000 sq. ft. and a lot width of 60 ft. in lieu of the required 70 ft. Petitioners also seek a determination that the merger doctrine does not prohibit the granting of the requested relief. A site plan was marked as Petitioners’ Exhibit 1.

Nikolaus Klosteridas appeared in support of the petition. James Heise, Esq. represented the Petitioners. 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 subject property is approximately 6,842 square feet in size and is zoned R.O.A. The property is unimproved and is shown as Lot Nos. 579-81 on the plat of Kimberly Farms, recorded in 1924. Delmaris, LLC (“Delmaris”) purchased the property in 2014 and the contract purchaser

proposes to construct a single-family dwelling on the lots.

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 lots were created long before the adoption of the BCZR and the property is therefore unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct a dwelling on the lots. 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 discussed at the hearing, assuming there was some doubt as to the propriety of variance relief, I believe Petitioners would be entitled to construct a dwelling on the lots pursuant to BCZR Section 304, which concerns the use of undersized lots. That regulation allows a dwelling to be constructed on a lot(s) created prior to 1955 when the only deficiencies are lot width and/or lot area. This provision is entitled “Use of Undersized Single-Family Lots” and does not require a showing of uniqueness or practical difficulty, as is required in a variance case under BCZR §307. *Mueller v. People’s Counsel*, 177 Md. App. 43 (2007).

The final issue concerns whether the subject property has merged with the adjoining improved lot (known as 7222 Holabird Avenue) also owned by Delmaris. There is no evidence to suggest the subject property was ever used to access or serve the structure at 7222 Holabird, which is now a law office. The properties were also acquired by Delmaris at different times: *i.e.*,

7222 Holabird was purchased in 2010 while the subject property was purchased in 2014. Finally, photographs submitted at the hearing (Pets. Ex. 2) show a wooden stockade fence separating the properties which would appear to be at least 10+ years old. In light of the foregoing I do not believe the properties have merged. *See Remes v. Montgomery Co.*, 387 Md. 52, 66 (2005) (“merger may be derived from the common owner's intent, as evidenced by integrating or utilizing the contiguous lots in the service of a single structure or project”).

THEREFORE, IT IS ORDERED, this 1st day of **May, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Sections 202.3.A.1 and 1B02.1.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a single-family dwelling on an undersized lot of 6,842 sq. ft. in lieu of the required 10,000 sq. ft., a lot width of 60 ft. in lieu of the required 70 ft., and a determination that the merger doctrine does not prohibit the granting of the requested relief, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
- Prior to issuance of permits Petitioners must amend the site plan to show the location of the two off-street parking spaces required by the BCZR.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed \_\_\_\_\_  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County