

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(Lots 241 & 242 Patuxent Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Estate of Charles & Barbara Lowe	*	HEARINGS FOR
<i>Legal Owner</i>		
Dino Cimino	*	BALTIMORE COUNTY
<i>Contract Purchaser</i>		
Petitioners	*	CASE NO. 2019-0244-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by the Estate of Charles & Barbara Lowe (Pamela Stern, Personal Representative), legal owner, and Dino Cimino, contract purchaser of the subject property (“Petitioners”). The Petitioners are requesting variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”): (1) to permit a minimum lot area of 5,000 sq. ft. in lieu of the required minimum 6,000 sq. ft.; (2) to permit a minimum lot width of 50 ft. in lieu of the required minimum 55 ft.; and (3) to permit a minimum side yard setback of 6 ft. in lieu of the required minimum 10 ft. A site plan was marked as Petitioners’ Exhibit 1.

Dino Cimino appeared in support of the petition. One neighbor attended the hearing to obtain additional information regarding the requests. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”). The DOP opposed the request.

The subject property is 5,000 square feet in size and is zoned DR 5.5. The unimproved property is located in the Chesaco Park community, the plat for which was recorded long before adoption of the BCZR. Petitioners propose to construct a dwelling on the lots but require zoning

relief to do so.

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).

I do not believe the subject property is unique in a zoning sense. Indeed, the lots are the same size and shape as the hundreds of others shown on the plat. As such I do not believe Petitioner has satisfied the requirements for variance relief. Maryland cases indicate variances are to be granted “sparingly” since it is “an authorization for [that] ... which is prohibited by a zoning ordinance.”

Cromwell, 102 Md. App. at 699.

Even so, and as discussed at the hearing, 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). As such, Section 304 would permit a single-family dwelling to be constructed on a 5000 sq. ft., 50 ft. wide lot, provided all other area regulations are satisfied.

In opposing the variance request the DOP opined the proposed dwelling would be incompatible with the community, which primarily features homes on lots 75 or 100 feet wide. Petitioners testified many homes in the neighborhood are in fact situated on 50 ft. wide lots, and in support of this contention they submitted a map with such properties highlighted. *See* Pet. Ex.

2. Having reviewed that exhibit, which shows 18 or 19 dwellings in the immediate vicinity constructed on 50 ft. lots, I do not believe the proposed dwelling would be incompatible with the community. Stated otherwise, I believe construction of a dwelling on the subject property would be “appropriate” pursuant to BCZR Section 304.4.

THEREFORE, IT IS ORDERED, this 31st day of **May, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”): (1) to permit a minimum lot area of 5,000 sq. ft. in lieu of the required minimum 6,000 sq. ft.; (2) to permit a minimum lot width of 50 ft. in lieu of the required minimum 55 ft.; and (3) to permit a minimum side yard setback of 6 ft. in lieu of the required minimum 10 ft., be and is hereby DENIED.

IT IS FURTHER ORDERED that Petitioners are entitled pursuant to BCZR Section 304 to construct on the subject property (*i.e.*, a 5,000 sq. ft. lot which is 50 ft. wide) a single-family dwelling, provided all setback and height requirements are satisfied.

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 permit(s) Petitioners 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