

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(1616 Burke Road)	*	OFFICE OF
15 th Election District		
6 th Council District	*	ADMINISTRATIVE HEARINGS
Frank & Deborah Scarfield	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	Case No. 2019-0275-SPHA

* * * * *

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 Frank & Deborah Scarfield, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) as follows: (1) to permit a side yard setback of 6 ft. and 10 ft. in lieu of the required 50 ft., respectively; (2) to permit a rear yard setback of 44 ft. in lieu of the required 50 ft.; and (3) to permit a lot containing 0.19 acres in lieu of the required one and one-half acres.

In the alternative, a Petition for Variance was filed: (1) to permit side yard setbacks of 6 ft. and 10 ft. in lieu of the required 50 ft., respectively; (2) to permit a rear yard setback of 44 ft. in lieu of the required 50 ft.; (3) to permit a lot containing of 0.19 acres in lieu of the required one and one-half acres; (4) to permit a lot coverage of 25 percent in lieu of the maximum permitted 15 percent; (5) to permit a structure (principal residence) with a height of 40 ft. in lieu of the maximum permitted 35 ft.; (6) to permit an accessory building in a residence zone with a height of 22 ft. in lieu of the permitted 15 ft.; (7) to permit a 10 ft. street property line setback in lieu of the required 50 ft. and 75 ft. from the centerline of the street for an accessory building; and (8) to permit a porch and deck with side yard setbacks of 6 ft. and 10 ft. in lieu of the required 37.5 ft., respectively.

A site plan was marked and accepted into evidence as Petitioners' Exhibit 1.

Landscape architect Matthew Bishop and Frank Scarfield appeared in support of the requests. Timothy M. Kotroco, Esq. represented Petitioners. Several neighbors opposed the request. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee ("ZAC") comments were received from the Department of Environmental Protection and Sustainability ("DEPS"), Bureau of Development Plans Review ("DPR") and the Department of Planning ("DOP"). None of the agencies opposed the request.

The unimproved waterfront lot is in the Bowley's Quarters community, and was created by a plat recorded in 1921. See Ex. 6. Though shown on the plat and title deed as being 50' wide, Mr. Bishop surveyed the site and determined the lot is just 45½ feet wide. Neighbors oppose the zoning request and primarily object to the proposed 6 ft. side yard setback and the height of both the proposed dwelling and garage.

The property is zoned RC-5 and (like nearly every other RC-5 waterfront lot in eastern Baltimore County) Petitioners would be unable to make any use of the lot without zoning relief, given the substantial setbacks and 1.5 acre minimum lot size required in that zone. Petitioners requested special hearing relief as an alternative to the variances; while the requests are to a large extent overlapping I believe the petition for variance more appropriately addresses the shortcomings of this unique site.

VARIANCE

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 lot is narrow and deep and was created long before adoption of the BCZR. As such the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct a home on this lot. This in my opinion would be especially egregious since the property is assessed for tax purposes at \$194,600 which surely represents a valuation for a buildable lot. Finally, I find that the variances (as modified below) 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.

I am certainly sympathetic to the concerns of the neighbors, who have lived in this bucolic setting for many years having enjoyed the openness provided by the vacant lot. The proposed home would be located 6 ft. from the property boundary with 1618 Burke Road, which I believe is not sufficient. In addition, I agree with the neighbors' concerns regarding the height of the proposed structures, which would be out of keeping with the improvements in the immediate vicinity. As such, while I believe Petitioners should as a matter of law and logic be permitted to construct a single-family dwelling on the lot, the design and layout of the site should accommodate to the extent possible the longtime residents of the area. In addition, such a result is in keeping with the generally applicable rule in zoning cases that the relief should be the minimal amount necessary to afford relief and allow the applicant to make a reasonable use of the property.

THEREFORE, IT IS ORDERED this 6th day of **June, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing: (1) to permit side yard setbacks of 6 ft. and 10 ft. in lieu of the required 50 ft., respectively; (2) to permit a rear yard setback of 44 ft. in lieu of the required 50 ft.; and (3) to permit a lot containing 0.19 acres in lieu of the required one and one-half acre, be and is hereby **DISMISSED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit side yard setbacks of 6 ft. and 10 ft. in lieu of the required 50 ft. and 50 ft., respectively, subject to the condition noted below; (2) to permit a rear yard setback of 44 ft. in lieu of the required 50 ft.; (3) to permit a lot containing 0.19 acres in lieu of the required one and one-half acres; (4) to permit a lot coverage of 25 percent in lieu of the maximum permitted 15 percent; (5) to permit a 10 ft. street property line setback in lieu of the required 50 ft. and 75 ft. from the centerline of the street for an accessory building; and (5) to permit a porch and deck with side yard setbacks of 6 ft. and 10 ft. in lieu of the required 37.5 ft. and 37.5 ft., respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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.
2. A 10 ft. side yard setback shall be provided on the side of the lot which adjoins the property at 1618 Burke Road.

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