

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(Parcel A, Locust Avenue)	*	OFFICE OF
3 rd Election District		
1 st Council District	*	ADMINISTRATIVE HEARINGS
Katherine Mae Sewell, <i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
	*	
Petitioner	*	Case No. 2019-0290-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 Katherine Mae Sewell, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to permit a proposed single-family dwelling on a lot containing less than 20,000 square feet which does not abut a right-of-way of at least 30 feet wide over which the public has an easement of travel, and to confirm that the density of the surrounding neighborhood will not be affected.

A Petition for Variance was filed to permit a proposed single-family dwelling with a lot area of 5,271 square feet in lieu of the required 6,000 square feet and a lot width of 50 feet in lieu of the required 55 feet. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

Ben Gary, Kathy Sewell and Margie Wade appeared in support of the requests. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Bureau of Development Plans Review (“DPR”) and the Department of Planning (“DOP”).

SPECIAL HEARING

In this case Petitioner proposes to construct a single-family dwelling on a property identified as Parcel “A.” The property is located in the Arbutus area of Baltimore County. The site plan shows the proposed dwelling would be accessed by a 25' wide easement which would be used in common with one other dwelling. The easement is unpaved (*i.e.*, a stone driveway) and as noted would serve only one existing and one proposed dwelling situated at the terminus of Locust Avenue.

The subject property is shown as “parcel A” on a plat filed in 1980 (PB 45/139). The area of property shown on the plat is 1.418 acres. Lot 1 shown on the plat, which contains an existing dwelling constructed in 1880 known as 1238 Locust Ave., is 1.297 acres in size. Parcel “A” shown on the plat is 0.121 acres and is unimproved. Under the DR 5.5 zoning the 1.418 acre tract shown on the plat would yield seven (7) density units. Assuming the proposed dwelling is constructed on Parcel A that would result in two (2) residential units for the overall tract, which means the “density of the surrounding neighborhood would not be affected.” As such the petition for special hearing will be granted.

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 property is situated at the terminus of a public street and is therefore unique. If the Regulations were strictly interpreted, Petitioner would experience a practical difficulty because she would be unable to construct a dwelling on the lot.

The DOP did not oppose the requests and its ZAC comment will be included as a condition to the relief granted herein. Petitioner confirmed the existing fence (which as mentioned in the DOP comment is in poor condition) will be removed in its entirety as part of this project.

The Bureau of DPR did not oppose the requests but suggested Petitioner should be required to extend the public road, sewer and water lines as part of the project. Petitioner indicated such improvements would cost in excess of \$40,000.00, which is more than the assessed value of the subject property. In these circumstances requiring the Petitioner to undertake such public improvements would be an unlawful exaction, since there is in my opinion no “rough proportionality” between the scope and impact of Petitioner’s request and the extent of the improvements requested by the local government, a requirement discussed in a recent Supreme Court case. *Koontz v. St. Johns River Water Mngt. District*, 570 U.S. 595 (2013). Although not permissible in the present case involving construction of one dwelling, the requests made by DPR would be reasonable and indeed commonplace in connection with a major residential subdivision.

The plan shows the existing 6” water line extends to the subject property, and Petitioner will be able to have a house connection at that location to obtain water service. The 8” sewer line will need to be extended by Petitioner to the subject property, and the plan shows a 25’ wide access and utility easement (which Petitioner proposes to acquire from the adjoining owner at 1238 Locust Ave.) which can be used for this purpose.

Finally, DPR indicated there is not a tax account associated with the subject parcel. That is incorrect; the tax account number for the parcel is 1800014573, and the assessed value is

\$28,300. The DPR also indicated Petitioner cannot construct a dwelling on the parcel unless she complies with the development process. It is true that a lot cannot be created as part of a zoning proceeding; that is a development and subdivision issue. The subject property is shown on the plat as Parcel "A" but is not identified thereon as a "lot." Whether or not this is a matter of semantics is beyond the scope of this proceeding. For present purposes it suffices to say that sufficient density exists to construct the dwelling on Parcel "A," and the variances granted below will address the only zoning impediments which presently exist.

THEREFORE, IT IS ORDERED this 21st day of **June, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to permit a proposed single-family dwelling on a lot containing less than 20,000 square feet which does not abut a right-of-way of at least 30 feet wide over which the public has an easement of travel, and to confirm that the density of the surrounding neighborhood will not be affected, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a proposed single-family dwelling with a lot area of 5,271 square feet in lieu of the required 6,000 square feet and a lot width of 50 feet in lieu of the required 55 feet, 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 her 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. Petitioner must comply with the ZAC comment submitted by the DOP, a copy of which is attached hereto.
3. Prior to issuance of a building permit Petitioner must obtain from the adjoining property owner a 25' wide ingress, egress & utility easement as shown on the site plan, and a deed evidencing this conveyance must be recorded in the County land records.

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