

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(21615 York Road)	*	OFFICE OF
7 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Orlando B & Bella D. Conan	*	FOR BALTIMORE COUNTY
<i>Legal Owners</i>		
Petitioners	*	Case No. 2019-0313-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 Orland B & Bella D. Conan, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to permit a single lot of record that is not in a subdivision prior to September 2, 2003 and have a lot size of 1.038 acres in lieu of the required 1.5 acres.

In the alternative, a Petition for Variance was filed: (1) to permit a front building setback of 100 ft. from the center of a collector road in lieu of the required 150 ft.; (2) to permit a side building setback of 24 ft. from the lot line, other than a street line in lieu of the required 50 ft.; and (3) to permit a side building setback of 41 ft. from the lot line, other than a street line, in lieu of the required 50 ft.

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

Bruce E. Doak of Bruce E. Doak Consulting, LLC and Eric Hartman 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. No substantive Zoning Advisory Committee

("ZAC") comment was received from any of the County reviewing agencies except the Department of Planning ("DOP").

Testimony was presented that the subject lot of 1.038 acres was created in 1988 and has been vacant since its creation. There are other structures on three sides of the site. It is perked and has an approved septic reserve area and well. It is the only vacant lot left in the area.

Testimony was presented as to the odd shape of the site, as well as limitations imposed by the placement of the septic field and well. In addition, topographical factors of the site make much of it impossible to grade appropriately. The subject property was allocated its growth acreage on the September 2, 2003 and it was pointed out by the Petitioner that under BCZR §1A04.3b2 smaller lot sizes (but in no event smaller than 1 acre) could be authorized by the DOP recites in which its growth allocation acreage had been awarded prior to June 11, 2004. It was also noted that the DOP had no objection to the special hearing request, but conditioned their support of the requested variances, noting the Department recommends the proposed dwelling be set back no more than 80' from centerline or at that point providing the minimum regulated separation between an existing well and an adjacent principal structure, whichever is the least distant to the aforementioned centerline.

Petitioner testified that, for reasons dictated by the constraints of size, configuration, topography and the positioning of the well and septic, the plan for development of the site would in fact include a setback of the proposed structure at no more than 80 foot from the center line of York Road, complying with the department's condition.

Based upon the above, I find that the Petitioner has satisfied the requirements for its requested special hearing relief.

As to the variance, it requires 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 upon the testimony and presentation I find that the subject property is in fact unique. Further, I find if the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to construct the proposed dwelling.

THEREFORE, IT IS ORDERED this 20th day of **June, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to permit a single lot of record that is not in a subdivision prior to September 2, 2003 and have a lot size of 1.038 acres in lieu of the required 1.5 acres, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a front building setback of 80 ft. from the center of a collector road in lieu of the required 150 ft.; (2) to permit a side building setback of 24 ft. from the lot line, other than a street line in lieu of the required 50 ft.; and (3) to permit a side building setback of 41 ft. from the lot line, other than a street line, in lieu of the required 50 ft., 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.

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

____ Signed _____
LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:sln