

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(5902 Hilltop Avenue)		
1 st Election District	*	OF ADMINISTRATIVE
1 st Council District		
Warren G. & Carole L. Grill	*	HEARINGS FOR
<i>Legal Owners</i>		
Petitioners	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0334-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Warren and Carole Grill, legal owners of the subject property (“Petitioners”). Petitioners are requesting variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a lot width of 40 ft. and side yard setbacks of 7 ft. and 7 ft. in lieu of the required 55 ft., 10 ft., and 10 ft., respectively for a new dwelling. A site plan was marked as Petitioners’ Exhibit 1.

Mr. and Mrs. Warren Grill and David Billingsley appeared in support of the petition. The adjoining owners opposed the request. 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 opposed the variance request. The unimproved site is approximately 6,005 square feet in size and is zoned DR 5.5.

As noted by the Office of People’s Counsel in correspondence dated June 20, 2019, this property has an “extensive zoning history.” While it is unnecessary to document in detail this history, it suffices for present purposes to note that the same owners sought approval in or about 1994 for an undersized lot pursuant to BCZR §304. Although the Zoning Commissioner granted the request, the County Board of Appeals (“CBA”) denied the petition and that decision was

affirmed by the Court of Special Appeals. The same owners filed a petition in 2004 seeking undersized lot approval pursuant to BCZR §304, although that petition was withdrawn. See Case No. 2004-0270-SPHA.

The current petition seeks variance relief under BCZR §307. Mr. Billingsley prepared a site plan and submitted a series of exhibits which present in a chronological fashion the history and evolution of this matter. Mr. Billingsley submitted a letter dated August 27, 1993 from the DRC granting the requested “Limited Exemption” and informing Petitioners they “may apply for a building permit.” See Exhibit 11. Mr. Billingsley also submitted an aerial photo showing that there are seven (7) other dwellings on the same block which are constructed on 40 ft. wide lots. I believe both of these documents are significant, although not dispositive, in this case.

With regard to the former, Mr. Billingsley indicated the DRC approval was not presented or discussed in connection with the 1994 zoning case. The DRC granted an exemption under former BCC Section 26-171(a). The letter did not specify which of the ten enumerated exemptions was granted, but the only applicable provisions concern lot line adjustments or constructing a dwelling on a single lot or tract. A potential issue at this juncture is whether the County should be equitably estopped in this scenario, based on the grant of the exemption and the statement that the owners could apply for a building permit. Having reviewed the aforementioned Code section I do not believe estoppel would be applicable since the Code clearly states that all development for which an exemption was granted must comply with “all applicable zoning regulations.” *Id.*

The aerial photo submitted by Petitioners (Ex. 12) shows that several dwellings on this same street are located on 40 ft. wide lots, and according to SDAT records submitted by Mr. Billingsley those lots are roughly the same size as or smaller than the subject property. I mention this only because I believe a proposed dwelling would not be incompatible with the community,

and were I writing on a blank slate this would weigh heavily in favor of granting a variance. But as Mr. Zimmerman noted, this case has a long zoning history and I agree with his argument that the current petition is barred by *res judicata*.

In a zoning case whether or not *res judicata* is applicable hinges on whether or not there have been “substantial changes in fact and circumstances between the first case and the second.” *Seminary Galleria, LLC v. Dulaney Valley Improv. Ass’n.*, 192 Md. App. 719, 739-40 (2010). Though the legal theory involved (i.e., a request for undersized lot approval previously, a variance request presently) is different in this case, the zoning request, property description and facts are all the same. The owners could have, but apparently did not, include a variance request in their original zoning petition in 1994. Under Maryland law *res judicata* applies not only to claims which were litigated in an earlier proceeding, but also those claims which *could have* been brought in an earlier case. *MPC, Inc. v. Kenny*, 279 Md. 29 (1977). As such I believe the request must be denied.

THEREFORE, IT IS ORDERED, this 19th day of **July, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations to permit a lot width of 40 ft. and side yard setbacks of 7 ft. and 7 ft. in lieu of the required 55 ft., 10 ft., and 10 ft., respectively for a new dwelling, be and is hereby DENIED.

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