

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(7524 A Fort Avenue)		
15 th Election District	*	OF ADMINISTRATIVE
7 th Council District		
Chesapeake Custom Properties, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0374-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Chesapeake Custom Properties, LLC, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“BCZR”) to permit a lot width of 50 ft. in lieu of the required 55 ft. for a proposed dwelling on existing lots on record. A site plan was marked as Petitioner’s Exhibit 1.

Charles Wolinski and David Billingsley appeared in support of the petition. Three neighbors 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 Environmental Protection and Sustainability (“DEPS”), indicating Petitioner must comply with critical area regulations.

The site is approximately 6,250 square feet in size and is zoned DR 5.5. The subject property (comprised of two 25 ft. wide lots) is unimproved and Petitioner acquired the lots by deed dated August 14, 2017. *See* Pet. Exhibit 5. Petitioner proposes to construct on the property a modest single-family dwelling, although the lots do not comply with the 55 ft. lot width requirement in the DR 5.5 zone. As such Petitioner seeks variance relief.

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 subject lots were created long before the adoption of the BCZR by the Plat of North Point Terrace, recorded in 1918. Pet. Ex. 6. As that plat reveals, most of the lots shown thereon are similar in size and shape. As such I do not believe the property qualifies as “unique” as that term is used in *Cromwell* and similar cases.

But I believe Petitioner is entitled to construct a dwelling on the lots pursuant to Section 304 of the BCZR, which concerns undersized lots. Unlike a variance request under Section 307 of the BCZR, an owner seeking relief under Section 304 does not need to establish that the property is unique or that they would suffer a hardship or practical difficulty if the request was denied. *Mueller v. People’s Counsel*, 177 Md. App. 43 (2007). 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.

The lots in this case were created in 1918, and the only deficiency for which zoning relief is sought concerns lot width. Although the neighbors expressed concern about a new home on a 50 ft. wide lot, the fact is that a great number of homes in the area—including several homes in the immediate vicinity of the subject property—are on 50 ft. wide lots. As such, pursuant to BCZR Section 304.4, I believe the proposed dwelling would be appropriate, although I will include a condition requiring the Department of Planning (“DOP”) to make a finding, prior to the issuance of a building permit, that the site design and architecture of the proposed dwelling will be

compatible in the context of the neighborhood.

THEREFORE, IT IS ORDERED, this 26th day of **August, 2019**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance pursuant to the Baltimore County Zoning Regulations (“BCZR”) to permit a lot width of 50 ft. in lieu of the required 55 ft. for a proposed dwelling on existing lots on record, be and is hereby DENIED.

IT IS FURTHER ORDERED that Petitioner shall be permitted to erect a one-family detached dwelling on the subject property pursuant to BCZR Section 304.

The relief granted herein shall be expressly subject to the following conditions:

1. Prior to issuance of permits Petitioner must comply with critical area regulations as determined in the sole discretion of the DEPS.
2. Prior to issuance of permits Petitioner must obtain from the DOP a finding that the site design and architecture of the proposed dwelling will be compatible in the context of the neighborhood.

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