

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(1728 Selma Avenue)	*	OFFICE OF
13 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
1 <sup>st</sup> Council District		
1728 Selma Avenue, LLC	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	<b>Case Nos. 2019-0418-SPHA</b>
		<b>2019-0416-A</b>
* * * * *		* *

**OPINION AND ORDER**

These consolidated cases come before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of 1728 Selma Avenue, LLC, legal owner (“Petitioner”). The Special Hearing in **Case No. 2019-0418-SPHA** was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to confirm that a merger did not take place between Lot 330 and combined Lots 328 and 328 ½ . In addition, a Petition for Variance was filed in that case pursuant to Section 1B02.3.C.1 of the BCZR to permit an existing dwelling with a lot width of 50 ft. in lieu of the required 55 ft. In **Case No. 2019-0416-A** a Petition for Variance was filed pursuant to Section 1B02.3.C.1 of the BCZR to permit a 10 foot side yard setback in lieu of the required 25 foot side yard setback. A site plan was marked and accepted into evidence as Petitioner’s Joint Exhibit 1.

Philip L. Reidel, the property owner, appeared in support of the requested relief in both cases. Michael McAuliffe, the President of the Halethorpe Improvement Association, appeared in opposition to the requested variances in both cases. The Petitions were advertised and posted as required by the BCZR. No substantive Zoning Advisory Committee (“ZAC”) comments were received from any of the County reviewing agencies in **Case No. 2019-0418-SPHA**. In **Case No.**

**2019-0416-A** comments were received from the Department of Planning (DOP) and are hereby incorporated.

With regard to the question of merger, Mr. Reidel testified that his parents bought this parcel (lot 330), along with the adjoining lots (328 and 328 ½) upon which they built the home at 1728 Selma Avenue. Mr. Reidel inherited that home when his parents passed away. He grew up there. He testified that the family has owned all three parcels since the 1950s and that lot 330 has always been vacant and has never had any structures of any kind on it. The only use it has had is as the family's vegetable garden many years ago. Neighborhood kids have also played there over the years. These facts were confirmed by Mr. McAuliffe, who has also lived in the neighborhood his whole life.

Regarding the request for variance relief, Mr. Seidel testified that he and his wife, who also attended the hearing, are in the process of planning for retirement and they want to have the option of selling this lot as a buildable lot, if necessary, in the future. He testified that he just recently learned that the parcel had been rezoned so as to now require a 55 foot wide lot for a dwelling. He explained that he and his wife have paid taxes on this parcel, as well as on the adjoining property at 1728 Selma Avenue, ever since they inherited the properties from his parents. He still owns the home and this parcel and has always been diligent in maintaining the properties. Over the years he has allowed his daughter and other family members to live in the home. These facts were also confirmed by Mr. McAuliffe, who has known the Reidel family his entire life. Mr. Reidel explained that it would be a significant financial hardship if lot 330 were deemed unbuildable.

Mr. McAuliffe testified on behalf of the Halethorpe Improvement Association and submitted a letter from the Association opposing the variances. (Protestants' Joint Exhibit 1). He also submitted aerial photographs of the neighborhood which were admitted as Joint Exhibits 2, 3,

and 4. He explained that the Reidels have always been good neighbors and that they are respected in the neighborhood. He explained that he understands the Reidel's financial hardship if this relief were denied but that the Improvement Association feels that is necessary to try to draw the line on future development since the neighborhood has experienced substantial "infill" and some of the new housing has been substandard in their view. He did acknowledge that there are many existing homes in the neighborhood that were built on the 50 foot lots that were laid out in the original development plat. He further acknowledged that other variances from the 55 foot width requirement have been granted in the neighborhood.

#### SPECIAL HEARING

Based on the evidence detailed above, I find that no merger has occurred between the parcels at 1728 Selma Avenue and lot 330, the parcel in question. Lot 330 has always been a separate lot and the Reidels have always paid separate taxes on it.

#### VARIANCE

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).

Mr. Reidel candidly admitted that there is nothing inherently unique about parcel 330. He explained that this 50 by 145 foot wide lot was laid out just like all the others in the original development. However, I note that it is a corner lot and that it is the only lot on the block that does not have a residence on it. Further, the Petitioner also owns the home next door at 1728 Selma Avenue so the requested variance relief will not negatively impact a neighbor on that side. Further,

because lot 330 is a corner lot the closest home on the other side is separated by Magnolia Avenue. As such, even if a dwelling is eventually built on this lot with only the requested 10 foot side yard setback it will still not be close to the residence on the other side of Magnolia Avenue. Further, it will not be an “infill” development of the sort described as problematic by Mr. McAuliffe. As such, I find the property is sufficiently unique.

As to the second prong of the analysis, I find that if the 55 foot width, and 25 foot side yard restrictions were strictly enforced, Petitioner would experience a significant and unwarranted financial hardship because he would be unable to build a dwelling on the lot or sell it as a buildable lot. His family has owned and paid taxes on the property for almost seventy years and have maintained it all that time. I find that it would be manifestly inequitable to prevent them from developing the property after this significant investment of money, time, and labor.

Furthermore, I find that the variance 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. With regard to the side yard variance, in its letter (Protestant’s Exhibit 1), the community association has expressed concerns about access to underground and overhead public utilities. However, if the Petitioner or a subsequent owner does undertake to build on this lot these issues will be addressed in the development process. Further, compliance with the DOP comments, which are hereby expressly incorporated, will ensure that an architecturally compatible dwelling will be built on the site, which will alleviate some of the Community Association’s concerns.

Finally, the Protestants’ letter also states that “it looks like *a lot* of the houses within the extended Halethorpe area follow the 25’ setback. Therefore, having the 10’ setback would not be in keeping with the character and appearance of the neighborhood.” However, the aerial

photographs submitted by the Protestants show that the setbacks in the neighborhood are not substantially uniform.

THEREFORE, IT IS ORDERED this 24<sup>th</sup> day of **October, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to confirm that a merger did not take place between Lot 330 and combined Lots 328 and 328 ½, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit an existing dwelling with a lot width of 50 ft. in lieu of the required 55 ft., be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a side yard setback of 10 feet in lieu of the required 25 feet, be and is hereby also 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 its 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. Pursuant to the DOP comment in Case No. 2019-0416-A, Petitioners shall provide architectural elevations to the DOP prior to the issuance of building permit. Any such architecture shall incorporate windows, shutters and other detailing into the façade facing Magnolia Avenue.

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

Signed \_\_\_\_\_  
PAUL M. MAYHEW  
Managing Administrative Law Judge  
for Baltimore County

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