

IN RE: PETITION FOR VARIANCE	*	BEFORE THE OFFICE
(119 W. Cherry Hill Road)		
4 th Election District	*	OF ADMINISTRATIVE
4 th Council District		
Jaspal Judge	*	HEARINGS FOR
<i>Legal Owner</i>		
Petitioner	*	BALTIMORE COUNTY
	*	CASE NO. 2019-0452-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County as a Petition for Variance filed by Jaspal Judge, legal owner of the subject property (“Petitioner”). Petitioner is requesting variance relief from Article 1B, § 1B02.3 of the Baltimore County Zoning Regulations (“BCZR”) to permit a total lot area of 55,081.66 square feet or less than 20,000 square feet per lot for a proposed 3-lot minor subdivision in lieu of the required 60,000 total square feet and a minimum of 20,000 per lot.

Jaspal Judge appeared in support of the petition. He was accompanied by Sri Appana, the engineer who prepared the site plan. The plan was admitted as Petitioner’s Exhibit 1. 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 Department of Planning (“DOP”), which opposed the requested relief; and the Department of Environmental Protection and Sustainability (“DEPS”). Correspondence was also received from People’s Counsel opposing the variance relief.

The gross area of the parcel is 65,514 square feet. It is zoned DR 2. Therefore, three lots are theoretically permitted. However, the Department of Public Works (“DPW”) has apparently requested/demanded a 50 foot right of way (“ROW”) along the frontage of the parcel on both

Nicodemus and West Cherry Hill roads. A comment in the file from Zoning Review states in relevant part as follows: “[t]he Petitioner states that comments were received during the minor subdivision application that a required ROW widening easement creates a lower lot area density.” And further, that “[p]etitioner was also advised of the following regarding the submitted site plan: 1. Lot area on site plan should state the proposed condition (1.504 acres and 65,514 is revised to 55,081.66 SF.” Finally, the Zoning Review comments state that “[p]etitioner insisted on filing and seeks further review comments as a result of this application.”

At the hearing, the engineer, Mr. Appana, explained that Mr. Judge had purchased the property in 2012 and was under the impression that he would be able to subdivide it into three lots in this DR 2 zone, given that it is more than 65,000 square feet. However, when he began the minor subdivision application process he was informed of the aforementioned ROW dedications that would be required. At the hearing the undersigned noted that, in addition to this square footage issue, and as noted by the DOP and Zoning Review, the site plan also failed to delineate the required 100 ft. minimum lot widths, among other things. I agreed to hold the case open and allow the Petitioner to resubmit a redlined site plan for county agency review for the purpose of correcting these deficiencies and perhaps resolving the right of way issue.

On March 4, 2020 Petitioner submitted a “revised” site plan (Petitioner’s Exhibit 2) directly to the undersigned, rather than to the proper county agencies as he had been directed. Further, the revised site plan is not a proper redlined plan and is still deficient in various other respects. Finally, the central ROW issue is still unresolved.

While I could simply deny the variance petition at this point based on the record evidence before me, I believe that would be an overly harsh result under the circumstances. As the letter from People’s Counsel correctly notes, BCZR § 307.1 does not authorize the grant of variances

from residential density regulations – and that is precisely what Petitioner requests in this case. I note, however, that the only reason that Petitioner is in this position is the fact that the county has evidently demanded that he dedicate the 50 ft. ROW, thereby reducing his lot size by over 10,000 square feet. This, however, is somewhat unclear because the Zoning Review comments describe this ROW area as an “easement” rather than a dedication in fee.

In any event, I do not believe it is appropriate for the County to demand that the Petitioner dedicate this ROW area as a condition of approving a three lot minor subdivision. To do so may well amount to an unlawful exaction because the consequences of the required right of way dedication - the loss of one of the three lots - seems to be disproportionate to the reasonably anticipated impacts of the proposed three new residential lots. *See, Dolan v. City of Tigard*, 512 U.S. 374 (1994), *Howard County v. JJM, Inc.*, 301 Md. 256 (1984). In my view, while the County could certainly take this property in fee using its eminent domain powers, it would have to fairly compensate Petitioner. Further, for purposes of calculating zoning density, the gross square footage of the parcel (65,514 sq. ft.) should nonetheless be used. Alternatively, if the County wishes to merely request an easement then the gross square footage should also be used in determining density. In sum, when calculating the permissible number of lots in a minor subdivision the County should use the gross square footage of the property, *prior* to any ROW dedications or easements.

I will therefore dismiss the variance petition without prejudice so that the Petitioner can resubmit a proper redlined site plan for agency review in light of the legal principles expressed herein.

THEREFORE, IT IS ORDERED, this **10th** day of **March, 2020**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from Article 1B §

1B02.3 of the Baltimore County Zoning Regulations (“BCZR”) to permit lot area of 55,081.66 total square feet or less than 20,000 square feet per lot for a proposed 3-lot minor subdivision in lieu of the required 60,000 total square feet or 20,000 per lot, be and is hereby DISMISSED, WITHOUT PREJUDICE.

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

PMM:sln