

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(1222 Bayside Road)	*	OFFICE OF
15 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
Wealthcare, LLC,		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2019-0461-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 Wealthcare. LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to determine that a lot merger did not take place with adjacent lot at 1220 Bayside Road and to confirm that the lot of record with an area of 0.231 acre is buildable. A Petition for Variance was filed pursuant to Section 1A04.3 as follows: (1) to permit a proposed dwelling with a building height of 43 ft. in lieu of the required 35 ft.; (2) a lot area of 0.231 acre in lieu of the required 1.5 acres; (3) a front yard building setback of 68 ft. from the centerline of the right-of-way in lieu of the required 75 ft. (4) side yard setback of 14 ft. and 10 ft. in lieu of the required 50 ft.; and (5) an open porch with side yard setbacks of 10 ft. in lieu of 37.5 ft. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1, a redlined version of the site plan was admitted as Petitioner’s Exhibit 10.

Christy Kopp and Bob Brendel, Esq. with Wealthcare, LLC, the property owner, appeared in support of the requests. They were assisted by consultant David Billingsley who had prepared the site plan. 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”). There were several neighbors who attended to voice their opposition to the requested relief.

SPECIAL HEARING

The Petitioner submitted several exhibits in support of their contention that Lot 93 has not merged with Lots 94 and 95, including the SDAT records showing separate tax accounts and the Deed of Record showing that Lot 93 was conveyed to Petitioner as a separate parcel. A copy of the Evergreen Park subdivision was also submitted, showing the separate lots. Further, a “Devolution of Title” was submitted showing the chain of title since 1938 by which Lot 93 has always been conveyed separately. These exhibits were admitted as Petitioner’s Exhibits 2, 3, and 9, respectively. One of the Protestants, Michelle Kolb, owns the adjoining property at 1246 Bayside Road. She testified that she grew up in the home and has lived there for 27 years. She testified that the former owners of the three parcels used them all as one property and that abandoned vehicles were stored on Lot 93 over the years. The neighbors on the other side, Amy and Matt Alsante also stated that the previous owners had used Lot 93 in connection with the residence on Lots 94 and 95. The Alsantes submitted a packet of documents and photos that were admitted collectively as Protestants’ Exhibit 2. Included in this Exhibit is a photo of a ramshackle carport structure. The Protestants contended that this structure was at least partially on Lot 93. Mr. Billingsley stated that this was incorrect and asked for leave to have a property line surveyor go to the site and stake out the property lines so as to establish whether any portion of the carport structure is on Lot 93. I granted this request and left the record open in order to resolve this issue. Mr. Billingsley had the property surveyed and has submitted a boundary survey that was performed by a professional land surveyor on November 22, 2019. According to the survey the

carport in question is located 12 feet inside Lot 94. The survey is admitted as Petitioner's Exhibit 11.

SPECIAL HEARING

Based on the testimony and evidence submitted I find that no merger has occurred between Lot 93 and Lots 94 and 95. In order for merger to occur between adjoining parcels the parcel that is allegedly merged must have been used by the adjoining parcel – one that is normally occupied by a residence or business – in a very substantial way. To wit, normally there must be a substantial and permanent physical structure built on the land in question, such as a swimming pool, a garage, or other such structure. *See, e.g., Mueller v. People's Counsel for Baltimore County*, 934 A.2d 974, 1006-1008 (Md. App. 2007) (holding that the construction of a boat launch and movable storage shed and the use of the lot for recreational purposes did not result in merger). In the instant case the boundary survey establishes that the carport in question is not on Lot 93. Even if it was it is questionable whether this one rickety structure would be sufficient to result in the merger of Lot 93. Therefore, the lot is theoretically buildable if the Petitioner satisfies either BCZR § 304, or, failing that, BCZR § 307.

BCZR § 304

This section of the BCZR allows a property owner to construct a single family residence on an undersized lot if three conditions are met:

- A. The lot in question was lawfully recorded either by deed or valid subdivision prior to 1955.
- B. All other requirements of the height and area regulations are complied with; and,
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements.

In the instant case the Petitioner can satisfy the first prong of the analysis because Lot 93 was recorded as part of the Evergreen Park subdivision in the 1930s at Liber 7 Folio 174. However, Petitioner's proposal does not meet the second prong because it does not meet either the height or setback restrictions. Therefore, BCZR § 304 is of no avail to Petitioner and they must find relief, if any, under BCZR § 307.

VARIANCE UNDER BCZR § 307

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). Further, under BCZR § 307, even if these two factors are present the requested variance relief must still be within the spirit and intent of the BCZR and not be harmful to the public health, safety and welfare. Finally, as a general matter, a variance should be granted only "sparingly," because it is "an authorization for that . . . which is prohibited by a zoning ordinance." *Id.* at 699.

According to the testimony and evidence I cannot find that Lot 93 is unique within the legal meaning of that term. The lot is virtually identical to all the other lots in the Evergreen Park subdivision in its dimensions and topography. Further, even if I were to find that the property is unique, and that denial of the requested variance would result in practical difficulty or hardship, I would still not grant the requested relief because I do not believe the proposed structure on this small parcel would be within the spirit and intent of the BCZR. First, the lot in question is less than a quarter acre and the RC5 zone requires a minimum lot size of 1.5 acres – in other words roughly six times as large. Second, as testified to by several of the Protestants, the vast majority

of the homes on this side of Bayside Road are built on “double” lots that are 100 feet wide, and this proposed structure on a single lot would not be compatible. Third, the setback variances requested are substantial, as is the height variance. Indeed, Petitioner wants to build a 43 foot high structure virtually on top of and in front of the Alsantes’ home next door. Protestants also testified that there is a commercial airstrip nearby and that there are often very low-flying planes overhead. They stated that they are, therefore, particularly concerned about the height of this proposed structure.

Finally, the Protestants described several recent storm events that caused substantial flooding in the neighborhood and this lot is, if not entirely, at least partially, within the Chesapeake Bay Critical Area (CBCA). Amy Alsante testified that prior to purchasing their lot they conferred with County officials in the Department of Environmental Protection and Sustainability about whether Lot 93 was a buildable lot. She stated that she and her husband were told that Lot 93 was subject to a CBCA easement and could therefore not be built on. Ms. Alsante produced photos showing CBCA signs posted around the property, which she said were removed by someone during the cleanup of the property. These photos are contained within a packet of materials submitted by the Alsantes, which was admitted as Protestants’ Exhibit 1. Ms. Kolb also testified about the CBCA signage that had been on the property and she also submitted aerial and street level photos of the site and the signs that were a part of the packets of materials that were admitted as Protestants’ Exhibits 2 and 3. Finally, both the original and the redlined site plans submitted by Petitioner acknowledge that the “site is located in the CBCA.” I note that the Redlined site plan (Petitioner’s Exhibit 10) depicts a “*Proposed Critical Area Easement*” over the rear third of the lot, but the meaning of this was never explained by Petitioner. Based on

this evidence I believe the proposed residential structure, which would add significant impervious area to the site, would be likely to harm the public health, safety and general welfare.

THEREFORE, IT IS ORDERED this **3rd** day of **December, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to determine that a lot merger did not take place with adjacent lots 94 and 95 be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance as follows: (1) to permit a proposed dwelling with a building height of 43 ft. in lieu of the required 35 ft.; (2) a lot area of 0.231 acre in lieu of the required 1.5 acres; (3) a front yard building setback of 68 ft. from the centerline of the right-of-way in lieu of the required 75 ft. (4) side yard setback of 14 ft. and 10 ft. in lieu of the required 50 ft.; and (5) an open porch with side yard setbacks of 10 ft. in lieu of 37.5 ft., be and is hereby DENIED.

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

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