

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(972 Seneca Park Road and	*	OFFICE OF
972 A Seneca Park Road)		
15 <sup>th</sup> Election District	*	ADMINISTRATIVE HEARINGS
6 <sup>th</sup> Council District		
Walter J. Stawinski	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	<b>Case Nos. 2019-0462-SPHA</b>
		<b>2019-0463-SPHA</b>
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**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 Walter J. Stawinski, legal owner (“Petitioner”). The Special Hearing in **Case No. 2019-0462-SPHA** was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”): (1) to determine that the two existing lots are not merged for zoning purposes; and (2) to approve an existing undersized lot of record. In addition, a Petition for Variance was filed in that case pursuant to Sections 1A04.3.B.2.b and 1A04.3.B.1.a of the BCZR as follows: (1) to permit an existing dwelling with a side yard setback of 4 feet and 5 feet in lieu of the required 50 feet, respectively; (2) to permit an existing dwelling with a front setback of 50 feet in lieu of the required 75 feet; and (3) to permit an existing lot with an area of 10,000 square feet in lieu of the required 1.5 acres (65,340 square feet). The Special Hearing in **Case No. 2019-0463-SPHA** was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”): (1) to determine that the two existing lots are not merged for zoning purposes; and (2) to approve an existing undersized lot of record. In addition, a Petition Variance was filed in this case pursuant to Sections 1A04.3.B.2.b and 1A04.3.B.1.a of the BCZR as follows: (1) to permit a proposed dwelling on an existing lot with a side yard setback of 5 feet in lieu of the required 50 feet; (2)

to permit a proposed dwelling on an existing lot with a front setback of 50 feet in lieu of the required 75 feet; and (3) to permit an existing lot with an area of 10,000 square feet in lieu of the required 1.5 acres (65,340 square feet). Site plans were marked and accepted into evidence as Petitioner’s Joint Exhibits 1 and 2.

Walter J. Stawinski, the property owner, and Bruce Doak, surveyor, appeared in support of the requested relief in both cases. There were no protestants or interested citizens in attendance. The Petitions were 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”) for **Case No. 2019-0462-SPHA** and **Case No.: 2019-0463-SPHA** and are hereby incorporated.

SPECIAL HEARING

With regard to the question of merger, the record evidence establishes that lots 82 and 83 are, and always have been, separate lots and that lot 82 has never been developed or used in any manner in connection with Lot 83. Separate B.G. & E bills, and water bills were produced for each lot, as well as separate County tax bills. The bill of sale and Deed also describe the two separate parcels. *See*, Petitioner’s Exhibits 3, 4, 5, 6, and 7. Based on the evidence detailed above, I find that no merger has occurred between the parcels at 972 Seneca Park Road and 972 A Seneca Park Road.

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. Doak explained that the original subdivision was laid out in 1926 and that the lots were all 50' wide and meant to house the "shore shacks" that were popular at the time. The zoning in the area was much later changed to RC5. Whereas most RC5 zones in Baltimore County are well and septic, this area is on public water and sewer, which makes it unique. The presence of public water and sewer also alleviates the primary concern of the RC5 zone, which is to make sure that the anticipated well and septic systems can be accommodated at the particular site.

With regard to the second prong of the legal analysis, if the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be unable to develop the property or to sell it as a buildable lot. Finally, 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. This is demonstrated by the absence of County and/or community opposition. It is further demonstrated by the fact that numerous similar variances have been granted in this subdivision, as documented by Petitioner's Exhibit 8.

THEREFORE, IT IS ORDERED this **13th** day of **November, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing (1) to determine that the two existing lots are not merged for Zoning purposes; and (2) to approve an existing undersized lot of record, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit an existing dwelling with a side yard setback of 4 feet and 5 feet in lieu of the required 50 feet, respectively; (2) to permit an existing dwelling with a front setback of 50 feet in lieu of the required 75 feet; and (3) to permit an existing lot with an area of 10,000 square feet in lieu of the required 1.5 acres (65,340 square feet), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a proposed dwelling on an existing lot with a side yard setback of 5 feet in lieu of the required 50 feet; (2) to permit a proposed dwelling on an existing lot with a front setback of 50 feet in lieu of the required 75 feet; and (3) to permit an existing lot with an area of 10,000 square feet in lieu of the required 1.5 acres (65,340 square 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 his 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. Prior to issuance of Permits, Petitioner must comply with ZAC comments received from DEPS, copies of which are attached hereto and made a part hereof.

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:slh