

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(Lots 27 & 28 Willis Drive) *	OFFICE OF
13 <sup>th</sup> Election District *	ADMINISTRATIVE HEARINGS
1 <sup>st</sup> Council District	
Harold John and Marguerite McKenna, *	FOR BALTIMORE COUNTY
<i>Legal Owners</i>	
Petitioners *	<b>Case No. 2019-0482-SPHA</b>
* * * * *	* *

**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 Harold John and Marguerite McKenna, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to confirm that a merger did not take place between these lots (27 and 28) and (29 and 30), the adjacent lots. In addition, a Petition for Variance was filed pursuant to BCZR §1B02.3.C.1: (1) to permit a proposed dwelling on existing lots (27 and 28) with an area of 10,036 sq. ft. in lieu of the required 20,000 sq. ft.; and (2) to permit a front yard setback of 35 ft. and rear yard setback of 30 ft. in lieu of the required 40 ft., respectively. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Harold McKenna appeared in support of the requests. Petitioner was represented by Joshua Hoffman, Esq. There were no protestants or interested citizens in attendance. 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”). That agency did not oppose the request.

## SPECIAL HEARING

Mr. McKenna testified that his wife, Marguerite McKenna, recently passed away. Mr. Hoffman proffered that the McKennas owned the properties in question as tenants by the entireties and that Mr. McKenna has therefore inherited them in fee simple. Mr. McKenna testified that they were married in 1979 and that he moved into the existing residence on Lots 29 and 30 that his wife had acquired in a divorce settlement with her previous husband. They then purchased lots 27 and 28 from her ex-husband's father. Mr. McKenna testified that lots 27 and 28 have always been vacant lots since the subdivision was created in 1924, as indicated on the development plat that was admitted as Petitioners' Exhibit 2. Further, Petitioners' Exhibit 3 is an aerial photo showing that Lots 27 and 28 are heavily wooded with mature trees, which further establishes that these lots have not merged with Lots 29 and 30. Finally, the properties all have separate tax accounts. Based on this evidence I find that there has been no merger between lots 27 and 28, and Lots 29 and 30. *See, Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43, 100-102 (2007) (only substantial physical structures used to support the adjoining residential use will result in merger).

## 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).

The property is heavily wooded and exceptionally small for a property zoned DR2. Further, it backs to larger properties with substantial rear yards, one of them a church. As such, the property

is unique. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty and hardship because they would be unable to construct even the modest sized residence that they are proposing due to the 40 foot front and rear setback requirements and the small lot size. 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. Indeed, as acknowledged in the DOP's comments, the proposed dwelling and setbacks are similar to those in the neighborhood, and there was no County and/or community opposition to the requested variance relief.

THEREFORE, IT IS ORDERED this **13th** day of **December, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to confirm that a merger did not take place between these lots (27 and 28) and (29 and 30), the adjacent lots, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to permit a proposed dwelling on existing lots (27 and 28) with an area of 10,036 sq. ft. in lieu of the required 20,000 sq. ft.; and (2) to permit a front yard setback of 35 ft. and rear yard setback of 30 ft. in lieu of the required 40 ft., respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.

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

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

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