

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
NE side of Overbrook Road, 71.74 feet		
SE of Banbury Road	*	OFFICE OF ADMINISTRATIVE
9 th Election District		
5 th Councilmanic District	*	HEARINGS FOR
(802 Overbrook Road)		
	*	BALTIMORE COUNTY
Baltimore County, Md.		
<i>Petitioner</i>	*	CASE NO. 2011-0358-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Variance filed by Baltimore County, a body politic, through Real Estate Compliance, Department of Permits, Approvals and Inspections (PAI). Petitioner requests Variance relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit:

- For a minimum net lot area of 5,997 sq. ft. in lieu of the required 6,000 sq. ft; and
- For a minimum lot width of 46.7 feet in lieu of the required 55 feet, and
- For a side yard setback of 3 feet in lieu of the required 10 feet.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the variance request and representing Baltimore County were Lois M. Bergman, Stephen Knable and Emily Iacchei, Esquire, all representatives of the Department of Permits, Approvals and Inspections, Real Estate Compliance Division, and Amy Hicks Grossi, attorney at law, representing Baltimore County. Appearing in opposition to the Petitioner’s request were many residents of the surrounding neighborhood, all of whom signed in on the Citizen’s Sign-in Sheet and whose names are too

numerous to mention. Reference is made to the Citizen's Sign-in Sheet included within the file for specific names and addresses. It should be noted that Patrick Kelly, the adjacent property owner, appeared and was represented by counsel, Adam Baker, Esquire with the firm of Whiteford Taylor and Preston.

Testimony and evidence offered indicated that the property which is the subject of these variance requests is identified as Lot numbers 93 and 94 located within Section A of the Idlewyld community here in the Towson area of Baltimore County. The property has a street addresses of 802 Overbrook Road. The subject lots are recorded in Plat Book #7, Folio 140 contained within the land records of Baltimore County. The plat for the Idlewyld subdivision was recorded in May, 1924. The property at this time is unimproved; however, it was improved with a single family residential dwelling which was recently torn down by Baltimore County government. The property has been vacant for almost one year.

Baltimore County government by and through Amy Hicks Grossi, their attorney, filed three variance requests for the subject lots. A number of residents appeared at the hearing in opposition to the County's requested variances. Shortly after the hearing, counsel for Baltimore County presented to this Office a written request to withdraw one of the variances specifically relating to Section 1B02.3.C.1 which requested a 3 foot side yard setback in lieu of the required 10 feet. That particular variance request has been withdrawn.

The County is seeking an Order on the two remaining variance requests, namely from Section 1B02.3.C.1 to approve a minimum net lot area of 5,997 square feet in lieu of the required 6,000 square feet, and from Section 1B02.3.C.1 for a minimum lot width of 46.7 feet in lieu of the required 55 feet. In essence, the County is requesting variance relief from the fact that the property located at 802 Overbrook Road is deficient in lot area by a mere 3 square feet and also

deficient in lot width in that the width of the lot is 46.7 feet in lieu of the required 55 feet. Testimony and evidence offered and the exhibits submitted into evidence demonstrated that there are other lots in the Idlewyld community that do not maintain the necessary lot width or lot size to meet current regulations. This is mostly due to the fact that the lots within this residential subdivision were created in 1924, many years before Baltimore County adopted its zoning regulations.

The County Council, taking into account the fact that there are many lots in and around Baltimore County that were designed and developed prior to 1945, (the year wherein Baltimore County adopted its first zoning code) were undersized in both area and width adopted Section 304 of the B.C.Z.R. Section 304.1 of the B.C.Z.R. states as follows:

§ 304.1 Types of dwellings allowed; conditions.
[Bill Nos. 64-1999; 28-2001]

Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 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 contained in these regulations.

A clear reading of Section 304 of the B.C.Z.R. provides that no variance relief is necessary and the property is a buildable lot in that the property in question was duly recorded by a validly approved subdivision prior to March, 1955; that all other requirements of the height and area regulations are complied with; (the applicant has withdrawn their side yard variance request); and the owner of the lot does not own sufficient adjoining land to conform to the width and area requirements of the zoning regulations. Therefore, withdrawing the side yard variance request

renders the subject property an undersized single family lot for which Section 304 of the B.C.Z.R provides that no additional zoning relief is necessary and a one family detached or semi-detached dwelling may be constructed on this property.

Inasmuch as Section 304 is applicable to this property, the variance relief requested by this applicant is unnecessary and shall be dismissed.

THEREFORE, IT IS ORDERED this 31st day of August, 2011 by this Administrative Law Judge that Petitioner's request for Variance relief for 802 Overbrook Road be and is hereby DISMISSED, as Section 304 of the Baltimore County Zoning Regulations is applicable and renders the subject property a buildable lot.

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

Signed
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK:pz