

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(320 Pennsylvania Avenue) *	OFFICE OF
9 th Election District	
5 th Council District *	ADMINISTRATIVE HEARINGS
Leon T. Benner, <i>Owner</i>	
Kevin Bielat, <i>Contract Purchaser</i> *	FOR BALTIMORE COUNTY
Petitioners *	Case No. 2015-0117-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 Leon T. Benner, legal owner, and Kevin Bielat, contract purchaser, (“Petitioners”). The Special Hearing was filed pursuant to §500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to confirm a previously approved undersized, non-conforming lot. In addition, a Petition for Variance seeks the following: pursuant to §§ 202.3.A.1 and 1B02.3.C.1 to permit a proposed single family dwelling with a front yard setback of 15 ft., side yard setbacks of 0 ft. and 6 ft. (sum of 6 ft.) on a lot with a width of 40 ft. in lieu of the front yard average of 21 ft., minimum side yard setback of 10 ft. (sum of 25 ft.) and a minimum lot width of 70 ft., respectively.

The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 6. Appearing at the public hearing in support of the requests was Kevin Bielat. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants in attendance, and the Petitioners submitted a letter of support from a neighbor who has lived in the area for over 18 years. Exhibit 9. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP) dated December 22, 2014. That agency did not oppose the requests, but recommended that minimum 3 foot side setbacks be maintained. The DOP also

noted the property was within the East Towson Residential Design Review Area, which necessitates certain approvals as discussed in the Order which follows.

The subject property is 0.13 acres and is zoned ROA. The property was improved with a single family dwelling that was destroyed by fire in 2004. Mr. Bielat proposes to construct a modest single family dwelling on the lot to use as his residence. To do so requires variance relief, as sought in the Petition.

The Petition also contains a request for Special Hearing relief to confirm a “previously approved undersized, nonconforming lot” at this site. It is true the lot is shown on a recorded plat of Goff Plains, surveyed in 1904. Ex. 3. But a special hearing request is unnecessary in this setting; variance relief is what is needed to construct a dwelling on this lot. It is also a matter of public record (i.e., the 1904 plat) that the property is a “residential single lot of record....that existed prior to June 11, 2004,” for purposes of County Code § 32-4-204(d)(2) concerning the review process for residential design review areas.

To obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People’s Counsel, 407 Md. 53, 80 (2008).

Petitioners have met this test. The lot is narrow and deep, and is therefore unique. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty, given that Petitioners would be unable to construct a single family dwelling on the lot, whereas other lots of the same or similar size (predating the ROA/D.R. 3.5 zoning) are improved with dwellings. Petitioner submitted a map and chart showing that nearby homes in the area are constructed on similar or smaller size lots, with narrow side yards, as noted in the DOP’s ZAC comment. Exs. 5 & 7. Finally, I find that the variance can be granted in harmony with the spirit and intent of the

B.C.Z.R., 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 community opposition.

THEREFORE, IT IS ORDERED this 27th day of January, 2015, by this Administrative Law Judge, that Petitioners' request for Special Hearing filed pursuant to §500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to confirm a previously approved undersized, non-conforming lot, be and is hereby DISMISSED without prejudice, as unnecessary.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §§ 202.3.A.1 and 1B02.3.C.1 to permit a proposed single family dwelling with a front yard setback of 15 ft., side yard setbacks of 10 ft. and 2 ft. (sum of 12 ft.) on a lot with a width of 40 ft. in lieu of the front yard average of 21 ft., minimum side yard setback of 10 ft. (sum of 25 ft.) and a minimum lot width of 70 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.
2. Petitioners must submit for approval by DOP elevation drawings of the proposed structure.
3. Prior to issuance of permits, Petitioners must obtain approval (i.e., indicating compliance with the East Towson Design Standards) from the Northeast Towson Improvement Association and the chairman of the Design Review Panel, or the Design Review Panel following a public meeting, as the case may be pursuant to County Code, §32-4-204(d)(2).

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

JEB/sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County