

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
AND VARIANCE	
(120 Stonewall Road) *	OFFICE OF
1 st Election District	
1 st Council District *	ADMINISTRATIVE HEARINGS
Algirdas M. Veliuona	
Petitioner *	FOR BALTIMORE COUNTY
	Case No. 2014-0216-SPHA

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

The Petitioner has filed a Motion for Reconsideration in a timely manner, and Protestants (Erica & Tadd Russo) have filed an opposition thereto. Protestants note (correctly) that such motions are appropriate only when the movant presents some “new or different factual situation” that would support a different conclusion in the case. Calvert Co. v. Howlin Realty, Inc., 364 Md. 301, 325 (2001). I do not believe the Petitioner has identified any such facts; even so, recognizing the importance of these issues to the parties, I will consider the motion.

The Petitioner is correct that the Order (at p.2) makes a generic reference to “nonconforming use,” when the more accurate statement would be that the former dwelling on site was a “nonconforming building or structure” (per B.C.Z.R. §104.3) which also falls under the rubric of Section 104, “Nonconforming Uses.” The subject property has always had a residential zoning classification, which of course permits single family dwellings as a matter of right. But that point does not assist the Petitioner.

Here, the property was improved with a single family dwelling that was (presumably) constructed in compliance with then-applicable codes and regulations. The Petitioner notes the zoning on the property was changed to DR-1 in 1992, and at that time

(if not before under the prior DR-2 and DR 3.5 designations) the property and dwelling became nonconforming.

Of course that did not mean Petitioner was obliged in 1992 to raze the dwelling or bring it into compliance with the regulations. That is because the dwelling became a lawful nonconforming building or structure, which is a type of property interest protected by the Maryland and U.S. Constitutions. Higgins v. City of Balto., 206 Md. 89, 98 (1955).

Under Baltimore County law (and its provisions are in many ways more generous than the nonconforming use laws of many other jurisdictions and municipalities) that dwelling could remain standing- - and even be enlarged by 25% - - conceivably in perpetuity. Such laws are designed to prevent the confiscation of an owner's property, which would indeed be a "taking" without payment of just compensation; i.e., a constitutional violation.

The single family dwelling was razed in 2007, and was not reconstructed within the time frames set forth in B.C.Z.R. §104. As such, the nonconforming status was lost. Petitioner in essence is seeking to have this time period extended to 7 years, which would be antithetical to the goal of zoning: to eliminate nonconforming uses and structures as speedily as possible. Carroll County v. Uhler, 78 Md. App. 140, 149 (1989).

As Petitioner notes, the lot in question was created prior to 1955 and is situated within a recorded subdivision (Stonewall) which was not approved by the Baltimore County Planning Board or Planning Commission. As such, the lot is of the type described in B.C.Z.R. §1B02.3.A.(3), (4) & (5), which means that Petitioner must comply with the "small lot table" in §1B02.3.C or seek variance relief.

Given the lot is deficient in significant respects (i.e., less than 50% of minimum lot area and 38% of the minimum lot width) Petitioner was forced to seek variance relief. As

noted in the original Order, the burden to obtain a variance is incredibly high, and I do not believe it was satisfied in this case.

WHEREFORE, for the foregoing reasons, it is this 24th day of July, 2014, by this Administrative Law Judge, ORDERED that the Motion for Reconsideration be and is hereby DENIED.

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