

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(8115 Bellona Avenue)	*	OFFICE OF
9 th Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
Gerard & Theresa Athaide		
Petitioners	*	FOR BALTIMORE COUNTY
	*	Case No. 2015-0175-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 the legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve an undersized lot with an area of 18,792 sq. ft. in lieu of the required 20,000 sq. ft. In addition, a Petition for Variance pursuant to B.C.Z.R. §1B02.3.C.1 seeks the following: (1) to permit a lot width of 85 ft. in lieu of the required 100 ft.; (2) to permit a side yard setback of 10 ft. in lieu of the required 25 ft.; and (3) to permit a side yard setback sum of 25 ft. in lieu of the required sum of 40 ft. side yard setbacks. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was Gerard & Theresa Athaide. Bruce E. Doak from Bruce E. Doak Consulting, LLC, whose firm prepared the site plan appeared and represented the Petitioners. Peggy Squitieri, of the Ruxton Riderwood Lake Roland Area Improvement Association, Inc. (RRLRAIA) attended to obtain additional information regarding the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was submitted by the Department of Planning (DOP), which opposed the requests.

PETITION FOR SPECIAL HEARING

The subject property is shown as lot #5 on the plat of “Woodlands,” recorded in 1945. Exhibit 5. That plat created a 12 lot subdivision, and lot #5 is the only lot which has not been improved with a single family dwelling. In 2004, the property was downzoned from D.R. 3.5 (which contains a 10,000 sq. ft. minimum lot size) to D.R. 2 (which contains a 20,000 sq. ft. minimum lot size). The Petitioners’ lot is just shy of that figure (approximately 5% deficient in area), and if the request was granted the permitted density would not exceed that shown on the original plat. As such, the petition for special hearing will be granted.

VARIANCE

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. If the B.C.Z.R. were strictly interpreted, Petitioners would experience a practical difficulty, given they would be unable to construct a single family dwelling on the lot. 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 lack of community opposition. The RRLRAIA indicated it was not opposed to the requests, and the parties agreed to certain restrictions which will be included in the Order below. Though 4,000 square feet was suggested as an appropriate maximum size for the proposed dwelling, I believe that 3,000 square feet (the size of the dwelling at 8117 Bellona Ave.) is a more appropriate figure considering this is one of the smaller lots in the subdivision.

THEREFORE, IT IS ORDERED this 5th day of June, 2015, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to approve an undersized lot with an area of 18,792 sq. ft. in lieu of the required 20,000 sq. ft., be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §1B02.3.C.1 seeking: (1) to permit a lot width of 85 ft. in lieu of the required 100 ft.; (2) to permit a side yard setback of 10 ft. in lieu of the required 25 ft.; and (3) to permit a side yard setback sum of 25 ft. in lieu of the required sum of 40 ft. side yard setbacks, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon 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. Prior to issuance of permits for construction of a single family dwelling, Petitioners must secure approval of the Baltimore County Design Review Panel.
3. Any single family dwelling constructed on the lot shall be restricted to 35 ft. height, 40 ft. width and a maximum of 3,000 square feet of above-grade enclosed area.

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