

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(13607 Brookline Road)	*	OFFICE OF
11 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Ellen McBarrow Burger & Kirsten Burger	*	FOR BALTIMORE COUNTY
<i>Owners</i>	*	
Petitioners	*	Case No. 2016-0158-SPHA

* * * * *

OPINION AND ORDER ON MOTION FOR RECONSIDERATION

Now pending is Petitioners’ Motion for Reconsideration of the March 15, 2016 Order issued in the above case. Petitioners set forth in their Motion certain facts which they contend justify variance relief. These are, for the most part, the same facts articulated by Mr. Doak at the March 14, 2016 hearing. I am mindful that counsel was not involved in the proceeding at that juncture, but do not believe the facts set forth in the Motion can support the grant of a variance. Under Maryland law, variances should be granted “sparingly” since it is “an authorization for [that] ...which is prohibited by a zoning ordinance.” Cromwell v. Ward, 102 Md. App. 691, 699 (1995).

On the other hand, I believe Petitioners would be entitled to avail themselves of B.C.Z.R. §304, which governs the “use of undersized single family lots.” Section 304.1 of the B.C.Z.R. is a grandfathering provision which provides as follows:

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.

The lot (and subdivision) was recorded prior to 1955 and Petitioners do not own adjoining land which would enable them to comply with the regulations. Motion, ¶¶21-22. As such, they would be entitled to construct a single family dwelling on the undersized lot, provided all height and setback requirements were satisfied. In other words, the dwelling height must not exceed 35 feet, side and rear yard setbacks are 50 feet, and the front setback from the centerline of Brookline Road is 75 feet. B.C.Z.R. §1A04.3.B.2. The subject lot is 145 feet wide, which would enable Petitioners to construct a dwelling that is 45 feet wide, after accounting for the side yard setbacks. While I understand Petitioners' preference is to construct a house in the configuration shown on the site plan, I do not believe that can justify the grant of a variance. Counsel's point concerning the RC 5 zone performance standards is a valid one, although I am confident the Department of Planning in conducting its review would take into account the house orientation was dictated by the significant setbacks in the RC 5 zone.

It is important to note that under this regulation (unlike B.C.Z.R. §307 governing variances) the Petitioners do not need to establish the property is unique or that they would experience a hardship or practical difficulty if the regulations were strictly interpreted. Mueller v. People's Counsel, 177 Md. App. 43, 87 (2007) ("B.C.Z.R. § 304 does not contain elements of practical difficulty or uniqueness, which are embodied in § 307").

THEREFORE, IT IS ORDERED this 22nd day of April 2016, by this Administrative Law Judge, that the Motion for Reconsideration be and is hereby DENIED as concerns the petition for variance.

IT IS FURTHER ORDERED that Petitioners shall be entitled to construct a single-family dwelling on the subject property in accordance with B.C.Z.R. §304, provided the height and setback requirements (as discussed above) are satisfied.

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