

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

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Ellen McBarrow Burger & Kirsten Burger, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to allow a property area (1.04 acres) less than 1.5 acres and a density less than 0.5 for existing lots that were created prior to 1979 as required in §1A04.3.B.1.a of the B.C.Z.R. In addition, a Petition for Variance seeks to allow a setback of 30 ft. in lieu of the required 50 ft. from any lot line other than a street per §1A04.3.B.2.b of the B.C.Z.R. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was Ellen McBarrow Burger & Kirsten Burger, legal owners. Bruce E. Doak, surveyor, assisted Petitioners. Several neighbors, represented by David Mister, Esq., attended the hearing and opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. No substantive Zoning Advisory Committee (ZAC) comments were received.

The subject property is 1.04 acres and zoned RC 5. The property is shown as Lot 11 on the plat of Carroll Manor (Petitioners’ Exhibit 3), which was recorded in 1954. The lot is

unimproved, although it contains a foundation or remnants of a barn the neighbors believe is historic. It was stipulated the property or the foundation are not listed on the Baltimore County Landmarks List. Petitioners propose to construct a single family dwelling on the lot, but require zoning relief to do so.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have not met this test. Mr. Doak testified “the lot is not unique ... it looks like all the other lots.” He argued that the property was nonetheless unique because, unlike the other lots with single family dwellings, the property was rezoned to RC 5 and Petitioners must comply with all current land use laws and regulations. While that may differentiate this property, it is not sufficient to establish the critical element of “uniqueness” required under Maryland law. To establish uniqueness a Petitioner must provide evidence the size, shape, topography, subsurface conditions, or environmental factors are unlike that of properties in the area. The court of special appeals has referred to these as “inherent characteristic[s]” of a property. North v. St. Mary’s County, 99 Md. App. 502, 512 (1994).

THEREFORE, IT IS ORDERED this 15th day of **March, 2016**, 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 allow a property area (1.04 acres) less than 1.5 acres and a density less than 0.5 for existing lots that were created prior to 1979 as required in §1A04.3B.1.a of the B.C.Z.R., be and is hereby DISMISSED as Moot given the denial of the petition for variance.

IT IS FURTHER ORDERED that the Petition for Variance which seeks to allow a setback of 30 ft. in lieu of the required 50 ft. from any lot line other than a street per §1A04.3.B.2.b of the B.C.Z.R., 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