

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b> *	BEFORE THE
<b>AND VARIANCE</b>	
(335 Loreley Road) *	OFFICE OF
11 <sup>th</sup> Election District	
6 <sup>th</sup> Council District *	ADMINISTRATIVE HEARINGS
Michael & Norleen Smith, <i>Owners</i>	
Petitioners *	FOR BALTIMORE COUNTY
	<b>Case No. 2016-0075-SPHA</b>

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**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 Michael and Norleen Smith, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve a lot size of 0.71 acre in lieu of the required 1.0 acre minimum. In addition, a Petition for Variance seeks approval for a dwelling with a street centerline setback of 44 ft. in lieu of the minimum required 75 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the requests was Michael Smith. Geoffrey Schultz, a licensed surveyor whose firm prepared the site plan, assisted Petitioners. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (DEPS) and the Department of Planning (DOP). There were no Protestants or interested citizens in attendance.

The subject property is 0.710 acres and zoned RC-2. The property was for many years improved with a mobile home used as a dwelling, although that has been removed from the site. Petitioners propose to construct a modest single family dwelling on the lot but require zoning relief.

The petition for special hearing in essence seeks to approve an undersized lot. Under the RC2 regulations, the minimum lot size is 1 acre. B.C.Z.R. § 1A01.3.B.2. But this lot was created by deed on July 31, 1972 (Petitioners' Ex. 7) prior to the adoption of the RC2 regulations. In 1972, the property was zoned RDP, as shown on the zoning map submitted as Petitioners' Ex. 5. The RDP zone likewise contained a 1 acre minimum lot size. B.C.Z.R. (1975) § 1A00.3.B.1. Even so, the DOP indicated in its comment that it believed Petitioners must establish that the lot "has existed in its present configuration since at least November 1979, the date the RC 2 regulations were adopted." Based on the testimony and documents submitted at the hearing, I believe Petitioners made such a showing. As such, the petition will be granted.

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 met this test. The property is irregularly shaped, 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 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 County and/or community opposition.

THEREFORE, IT IS ORDERED this 13<sup>th</sup> day of November, 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 a lot size of 0.71 acre in lieu of the required 1.0 acre minimum, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to allow a dwelling with a street centerline setback of 44 ft. in lieu of the minimum required 75 ft., 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 Petitioners must comply with the Critical Area regulations.

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

JEB/sln

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County