

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE OFFICE
<b>(8203-A Gum Tree Dr.)</b>		
12 <sup>th</sup> Election District	*	OF ADMINISTRATIVE
7 <sup>th</sup> Council District		
1735 Searles, LLC	*	HEARINGS FOR
<i>Legal Owner</i>		
	*	BALTIMORE COUNTY
Petitioner		
	*	<b>CASE NO. 2016-0284-A</b>

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of 1735 Searles, LLC, owner of the subject property (“Petitioner”). Petitioner requests variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) § 1B02.3.C.1 to allow a lot width of 50 ft. in lieu of the required 55 ft. A site plan was marked as Petitioner’s Exhibit 1.

James & Jan Gay and surveyor J. Scott Dallas appeared in support of the Petition. Several neighbors attended the hearing and opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Environmental Protection and Sustainability (DEPS) and the Department of Planning (DOP).

The subject property is approximately 8,250 square feet and is zoned DR 5.5. The property is unimproved and is comprised of Lot Nos. 242 & 243 as shown on the plat of Rosewald Beach. Petitioner proposes to construct a single-family dwelling on the lots, but requires zoning relief since the Regulations require a minimum lot width of 55 ft. in the DR 5.5 zone. The Petitioner also owns the adjoining property at 8203 Gum Tree Drive, which is improved with a single-family dwelling constructed in 1946. The adjoining property is comprised of Lot Nos. 240 & 241 as shown

on the plat of Rosewald Beach, and is the subject of Case No. 2016-0283-A, which was combined for hearing with the present matter.

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).

Petitioner has not met this test. No testimony or evidence was presented to show the subject property is unique or unlike surrounding properties. In fact, the unimproved lots are exactly the same size and shape of others in the community. As such variance relief cannot be granted. Under Maryland law, a variance request should be granted “sparingly” since it is “an authorization for [that] ...which is prohibited by a zoning ordinance.” *Cromwell*, 102 Md. App. at 699. This case does not present the compelling circumstances required under Maryland law for granting such relief.

Though not sought in the petition, Petitioner could have attempted to obtain approval using the “undersized lot” regulation in B.C.Z.R. §304. While at first glance it appears this provision may be applicable, there is a potential issue regarding whether Lot Nos. 242 & 243 (the unimproved subject property) have “merged” for zoning purposes with Lots 240 & 241, on which the existing dwelling is located. No testimony or evidence was presented concerning how these properties have been used throughout the years, and it is therefore unclear whether a merger would have occurred as discussed in *Friends of the Ridge v. BGE*, 352 Md. 645 (1999). According to state records in the file, all four lots owned by Petitioner were acquired at the same time (March, 2016) and in the same deed, and there is only one tax account for the four lots. These facts may

have some bearing on whether or not a merger has occurred, but that issue cannot be resolved on the record in this case.

THEREFORE, IT IS ORDERED, **this 5<sup>th</sup> day of July, 2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (“B.C.Z.R) § 1B02.3.C.1 to allow a lot width of 50 ft. in lieu of the required 55 ft., be and is hereby DENIED.

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

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge for  
Baltimore County

JEB/sln