

IN RE: PETITION FOR VARIANCE
(6803 Woodrow Avenue)
12th Election District
7th Council District
Michael C. Lam
Petitioner

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BEFORE THE OFFICE
OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY
CASE NO. 2017-0003-A

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance filed by Michael C. Lam, owner of the subject property (“Petitioner”). The Petitioner is requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a proposed single-family dwelling to be constructed on a parcel 50 ft. wide with a front yard setback of 31 ft. in lieu of the required 55 ft. and front yard average of 37.7 ft., respectively. A site plan was marked as Petitioner’s Exhibit 1.

Ebenezer Olarewaju appeared in support of the petition. Neighbors adjoining the subject property attended the hearing and opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the county agencies.

The subject property is approximately 6,250 square feet and is zoned DR 5.5. The property is unimproved and Petitioner proposes to construct a single-family dwelling on the lot. Neighbors oppose the request and are concerned with the noise and disruption of constructing a new home on the lot. They also contend the zoning code should be enforced as written.

It is clear the lot is undersized in that it is 50' wide while the B.C.Z.R. requires 55 ft. I respectfully disagree with the County’s determination that the front yard setback required is 37.7

ft. I understand how that average setback was obtained under B.C.Z.R. §303.1, but I do not believe that provision is applicable here. These lots (Nos. 399 & 400) were created by the plat of Graceland Park, recorded in 1917. As such, these lots are ones described in B.C.Z.R. §1B02.3.A.3, 4, and 5. The “small lot” table specifies for this property a 55 ft. width requirement and front yard depth of 25 ft. So in my opinion Petitioner requires relief for the lot width deficiency but not the front yard setback, which is shown on the plan as 31 ft.

As noted many times previously, obtaining a variance in a contested case is an uphill battle, and Maryland courts have stated variances should only be granted sparingly. 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 cannot satisfy these requirements. The lots in question are virtually identical to the more than 400 other lots shown on the plat of Graceland Park. There is simply no basis upon which a variance can be granted.

Petitioner’s only request was for variance relief. But Petitioner may be entitled to construct a dwelling on the property pursuant to B.C.Z.R. §304, which concerns undersized lots. That regulation permits an owner to construct a dwelling on property which does not satisfy the minimum lot width requirement. It also requires the owner to comply with all other zoning requirements. As such, the pivotal question becomes whether the applicable front yard depth is 37.7 ft. or 25 ft. as provided in the small lot table. If the former, as determined by County zoning staff, the Petitioner would not be entitled to construct the dwelling. In any event, the Petitioner

did not seek relief under B.C.Z.R. § 304 and it will be up to the zoning review office in the first instance to determine whether the owner can seek a building permit in these circumstances.

THEREFORE, IT IS ORDERED, this 19th day of September, **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.”) to permit a proposed single-family dwelling to be constructed on a parcel 50 ft. wide with a front yard setback of 31 ft. in lieu of the required 55 ft. and front yard average of 37.7 ft., respectively, be and is hereby DENIED.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sln