

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
W/side of Lodge Forest Drive, 105' N	*	OFFICE OF
of c/l of North Point Creek Road		
15 th Election District	*	ADMINISTRATIVE HEARINGS
7 th Council District		
(2204 Lodge Forest Drive)	*	FOR BALTIMORE COUNTY
Elaine M. and Henry Krus		
Petitioners	*	CASE NO. 2012-0248-SPHA

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Hearing and Variance filed by the legal owners of the subject property, Elaine M. and Henry Krus. The Petitioners are requesting Special Hearing relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), seeking a determination that the adjoining lot (known as 2206 Lodge Forest Drive) has not been merged with the subject lot. The Petitioners are also seeking variance relief from § 1B02.3.C.1, to permit an existing lot (improved with a single family dwelling) width of 47.5' in lieu of the required 55'. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the public hearing held for this case was Petitioner Henry Krus. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance, and the file does not contain any letters of opposition or protest.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. A ZAC comment was received from the Department of Planning on May 3, 2012, indicating no opposition; however, that Department requested the following conditions be imposed on any

relief granted:

1. Submit building elevations to the Department of Planning for review and approval prior to the issuance of any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
2. Provide landscaping along the public road and/or preserve any existing mature vegetation and trees, if applicable.

In addition, a ZAC comment was received by the Department of Environmental Protection and Sustainability (DEPS) on May 10, 2012, indicating the property is located in a Limited Development Area within the Chesapeake Bay Critical Area. That Department indicated that so long as Chesapeake Bay Critical Area regulations are adhered to, the criteria set forth in B.C.Z.R. § 500.14 would be satisfied.

Testimony and evidence revealed that the subject property is part of a larger subdivision created in the 1940s for employees of the nearby Bethlehem Steel Company. The Petitioner's parents bought the subject property in the 1940s, and at the same time acquired the adjacent lot, which was separately deeded. Both lots are 47.5' wide, as are the other lots in the subdivision. In later years, the B.C.Z.R. was enacted and imposed a 55' width requirement on lots with DR 5.5 zoning.

Based on the evidence presented, I find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995). I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Indeed, this lot was created before the enactment of the B.C.Z.R., and is improved with a single family dwelling. Thus, the variance is sought only to legitimize existing conditions.

I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioners, given that the lot and home their family has owned for over 75 years would be deemed illegal.

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 absence of community and County agency opposition. In fact, this lot and dwelling are similar in nearly all respects to all of the lots and homes in the subdivision, so the variance relief will in no way negatively impact the community.

The Petitioners have also sought special hearing relief, seeking a determination that the lots at 2204 and 2206 Lodge Forest Drive have not “merged” by operation of law. When viewed on a Google Earth map, it appears as if a small (approximately 4' wide) sliver of driveway paving extends onto the vacant lot at 2206. The Petitioner explained he re-paved the driveway at his home (2204) several years ago, and decided to widen a small area so another car could be parked or drive by an already parked vehicle. Petitioner testified he had no intent to merge the lots, and that he and his wife (and her parents before them) took pains to keep the lots separate and independent. There are no structures or accessory buildings of any kind straddling the lot boundaries, and no evidence was presented that Petitioners used the vacant lot in any way to service the adjoining lot.

The Department of Planning, in a memorandum dated April 24, 2012, opined that these lots had not been merged. I concur. There is simply no evidence that Petitioners intended to merge the lots, nor have the lots been treated as one; i.e., by use of the same address or same tax assessment. Remes v. Montgomery Co., 387 Md. 52, 57-58 (2005).

Pursuant to the advertisement, posting of the property and public hearing on these Petitions, and for the reasons set forth above, the special hearing and variance relief shall be granted.

THEREFORE, IT IS ORDERED, this 24 day of May, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), seeking a determination that the subject property has not been merged with the adjoining lot (a vacant lot known as 2206 Lodge Forest Drive), be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from B.C.Z.R. § 1B02.3.C.1, to permit an existing lot width (for the improved property known as 2204 Lodge Forest Drive) of 47.5' in lieu of the required 55', be and is hereby GRANTED.

The relief granted herein shall be conditioned upon and subject to the following:

1. The Petitioners may apply for any required permits and may be granted same upon receipt of this Order; however the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.

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:pz