

IN RE: PETITION FOR VARIANCE
(1414 Walnut Avenue)
Palmetto Group, Inc., *Legal Owner*
Olympia Properties, Inc.,
Contract Purchaser/Lessee
Petitioners

* BEFORE THE
* OFFICE OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* **CASE NO. 2013-0015-A**

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as a Petition for Variance filed by the legal owner, Palmetto Group, Inc. and Olympia Properties, Inc., contract purchaser (the “Petitioners”). The Petitioners are requesting Variance relief from §§ 304.1.B and 1B02.3.C.1 the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- (1) To allow an undersized lot of 7,410 square feet in lieu of the required 20,000 square feet,
- (2) To allow a minimum lot width of 50' in lieu of the required 100',
- (3) To allow a minimum side yard of 8' in lieu of the required 15', and
- (4) To allow a minimum sum of side yard widths of 16' in lieu of the required 40'.

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 in support for this case was Sam Tenenbaum, Eric L. Bers, Aharon Feivelson, and Thomas J. Hoff, Landscape Architect, who prepared the site plan. J. Neil Lanzi, Esquire attended and represented the Petitioners. Appearing in opposition to the request was Peggy Squitieri, RRLRAIA, Joel M. Eagle, Zak Shirley, and Mark A. Hall. It is to be noted that letters were received in opposition to the request from Zak and Gabrielle Shirley, adjacent

neighbors at 1417 Walnut Avenue, and Veronica Piskor, President of the Pleasant View Civic Association. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

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 (DOP) on September 7, 2012, indicating the following:

The Department of Planning has reviewed the petitioner's request and accompanying site plan. The petitioner's request involves placing a significantly smaller residential structure in between two larger residential structures, which is not the most desired scenario for site design.

However, this department recognizes the fact that the proposed dwelling would likely be consistent with the development pattern of existing older homes in the neighborhood, and the placement between 1416 Walnut Avenue and 1410 Walnut Avenue would be uniform in character amongst the aforementioned lots. The potential development of similar undersized lots also on Walnut Avenue could possibly bring a sense of neighborhood character and consistent development pattern for the remaining undersized lots on Walnut Avenue.

Due to varying housing styles and lot sizes on Walnut Avenue, the Department of Planning does not oppose the petitioner's request subject to further review and approval by the Baltimore County Design Review Panel (DRP).

Prior to any decision/order by the Administrative Law Judge (ALJ) of Baltimore County the proposed project must go before the Design Review Panel for review and approval. Pursuant to Section 32-4-203.i.2 of the Baltimore County Code the disposition of the DRP is binding on the decision of the ALJ.

To date the Department of Planning has not received architectural elevations that address the architectural requirements of the Ruxton Riderwood-Lake Roland Design Review Panel Area.

The petitioner shall add a note to the plan stating the following:

The proposed development is within the Ruxton Riderwood- Lake Roland Design Review Panel Area. Contact Jenifer Nugent in the Department of Planning (410-887-3480) to discuss Design Review Panel scheduling, requirements, process and submissions. Proposed house plans, elevations and materials shall be reviewed and approved by the DRP.

Testimony and evidence revealed that the subject property is 7,410 square feet (0.17 acres) and is zoned DR 2. The Petitioners propose to construct a modest single-family dwelling on a small (undersized) lot and need variance relief to do so.

The Petitioners presented the testimony of Thomas Hoff, a landscape architect who was accepted as an expert witness. Mr. Hoff described the property, and indicated the lot in question was created by plat nearly 100 years ago. See Exhibit 6. Mr. Hoff indicated that in over 40 years of experience working on zoning and development matters, he had never seen a scenario like this, where a 50' wide lot, created on a 100-year old plat, had remained vacant. Mr. Hoff opined that the property was therefore “unique”, and that the Petitioners would suffer a hardship if relief were denied, since they would be unable to use the property for its intended purposes. In response to a question on cross examination, Mr. Hoff stated that the DR 2 designation “distorts” the zoning on this lot.

Aharon Feivelson, the president of Olympia, LLC, testified that he is the contract purchaser, and has invested nearly \$300,000 to this point in an effort to construct a home on this site. Mr. Feivelson stated that the home would be well designed and high quality, and he submitted a photo of a recent home his firm had constructed. Exhibit 7. Eric Bers, the president of Palmetto, also testified and he indicated he owns the subject property and also owns the house at 1416 Walnut Avenue, which he has been renting to tenants. Mr. Bers explained that Baltimore County required him to make approximately \$100K in road and sewer improvements before he was issued a permit to construct a single-family dwelling at 1416 Walnut Avenue. See Exhibit 9.

Thereafter, several neighbors testified in opposition to the Petition, citing traffic and quality of life concerns. Though each resident expressed unique concerns, they all believed that

the Petitioners were attempting to squeeze a house on a small lot, and that their property values and quality of life would decline as a result.

As the Court of Special Appeals has noted, the B.C.Z.R. provides two avenues whereby the owner of an undersized lot can seek to construct a dwelling on a parcel not in compliance with current zoning standards. The first is provided by B.C.Z.R. § 304, which governs “Use of Undersized Single-Family Lots.” This section is distinct from the general variance provision at § 307, and does not require a showing of uniqueness or hardship. *Mueller v. Balto. Co.*, 177 Md. App. 43, 87 (2007).

But the Petitioners cannot succeed under § 304, because they do not satisfy all of the elements of B.C.Z.R. § 304 A, B and C. Specifically, the Petitioners cannot satisfy subsection B, which requires the applicant to comply with all other height and area regulations (other than lot area and width). It is undisputed that the Petitioners cannot satisfy the side yard regulations set forth at § 1B02.3.C. Thus, the Petitioners must satisfy the variance standards under B.C.Z.R. § 307, as articulated in *Cromwell v. Ward*, 102 Md. App. 691 (1995) and similar cases.

Based upon the testimony and evidence presented, I will deny the request for variance relief. Under *Cromwell* and its progeny, to obtain variance relief requires a showing that:

- (1) The property is unique; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People’s Counsel, 407 Md. 53, 80 (2008).

Petitioners have not met this test.

Under Maryland law, uniqueness means that the subject property has “inherent characteristics not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors” *North v. St. Mary’s Co.*, 99 Md. App. At 512. I do not

believe the subject property is “unique” in this sense, and it is similar in size, shape and topography to the adjoining lots shown on Exhibit 6. Mr. Hoff emphasized the fact that this lot was created by a 100-year old plat and is still vacant, but I do not think these factors concern the inherent, physical characteristics of the property itself. Mr. Hoff also discussed the slope and narrowness of the lot, but there is no indication in the record that the slope of the subject property is any greater than that of adjoining lots, and as noted above, the other lots are also narrow (50’).

I agree with Mr. Hoff that the DR 2 designation has “distorted” the zoning on this lot. And to address such scenarios, the County Council enacted B.C.Z.R. § 304, which is a “grandfather provision that protects a landowner from a change in the zoning laws” under certain circumstances. *Mueller*, 177 Md. App. at 84. As noted above however, the Petitioners cannot satisfy the three conditions required by that regulation. While I do believe that certain equitable factors militate in the Petitioners favor (including the infrastructure investment made in connection with the construction of 1416 Walnut Avenue), the OAH is given only limited authority to grant variances, and I do not believe that the Petitioners are entitled to variance relief under B.C.Z.R. § 307.

Pursuant to the advertisement, posting of the property, and public hearing on this petition, and after considering the testimony and evidence, I find that Petitioners’ variance request should be denied.

THEREFORE, IT IS ORDERED, this 27th day of September, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from §§ 304.1.B and 1B02.3.C.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- (1) To allow an undersized lot of 7,410 square feet in lieu of the required 20,000 square feet,
- (2) To allow a minimum lot width of 50' in lieu of the required 100',

- (3) To allow a minimum side yard of 8' in lieu of the required 15', and
- (4) To allow a minimum sum of side yard widths of 16' in lieu of the required 40',

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:dlw