

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(2815 Virginia Avenue)	*	OFFICE OF
13 th Election District		
1 st Councilmanic District	*	ADMINISTRATIVE HEARINGS
Shaun Gormley		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2013-0185-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed by Joseph Larson, on behalf of Shaun Gormley, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to approve an undersized lot and to determine that the property is not merged with an adjacent lot. The variance relief from B.C.Z.R. § 1.B02.3.C.1 sought to permit a lot width of 50 ft. in lieu of 55 ft. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the public hearing in support of the requests was Shaun Gormley and Joseph Larson, who is assisting the Petitioner. 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 substantive Zoning Advisory Committee (ZAC) comments received.

The subject property is 6,250 square feet in size and is zoned DR 5.5. The Petitioner acquired the property in 2011, and wants to construct a dwelling on the site. At present, the property (which is comprised of lots 21 & 22 in the Baltimore Highlands subdivision) is

improved only with a dilapidated garage, which Petitioner will raze when he constructs the dwelling.

With respect to the Special Hearing, the only deficiency concerns the lot width, which is the subject of the variance request. The lot area is 6,250 square feet which satisfies the minimum lot area (6,000 square feet) set forth at B.C.Z.R. §1B02.3.C. The Petitioner also indicated that the yard and setback requirements in this regulation would be satisfied when he constructs the dwelling. Thus, only the lot width of 50' (55' is required) is at issue. As such, the Petition for Special Hearing will be granted.

The Petitioner also included in the Special Hearing petition a request to determine that the lot(s) he owns (Lot ## 21 & 22) had not merged with an adjacent lot. This request was made at the suggestion of County zoning staff. Having reviewed the plan, SDAT records and the testimony, I don't believe there is any evidence to suggest that a merger has occurred here. The subject property is adjoined by single family dwellings (at 2811 & 2817 Virginia Avenue) that are owned by unrelated individuals, and no structures, paving or other construction straddles any of these property boundaries. The subdivision was platted in 1908, and at the time the lots were 25' wide. Since that time, homes have been constructed on "double" (50' wide) lots, and to that extent, I do believe the individual 25' wide lots (here, lots 21 & 22) would merge as a matter of law when a single family dwelling is constructed straddling the internal lot lines. But there is nothing to indicate that 2815 Virginia Avenue (lots 21 & 22) has merged with either 2817 Virginia (lots 23 & 24) or 2811 Virginia (lots 19 & 20). See Exhibit 1.

Based upon the testimony and evidence presented, I will also grant 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).

The Petitioner has met this test. This is a narrow and deep lot created over 100 years ago, and it is therefore unique. The Petitioner would experience a practical difficulty if the regulations were strictly enforced, since he would be unable to construct a dwelling on the property. 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.

Pursuant to the advertisement, posting of the property, and the public hearing, and after considering the testimony and evidence offered, I find that Petitioner's Special Hearing and Variance requests should be granted.

THEREFORE, IT IS ORDERED this 2nd day of April 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing to approve an undersized lot and to determine that the property has not merged with an adjacent lot, filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's Variance request from B.C.Z.R. §1.B02.3.C.1 to permit a lot width of 50 ft. in lieu of 55 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would 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/dlw