

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(12240 Greenspring Avenue)	*	OFFICE OF
4 th Election District		
2 nd Councilmanic District	*	ADMINISTRATIVE HEARINGS
Joanne Henderson (Trustee)	*	FOR BALTIMORE COUNTY
Petitioner	*	
	*	Case No. 2013-0240-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 Bruce Doak, on behalf of the Petitioner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to allow a combined property area of less than 1.5 acres and a density less than 0.5 for existing lots (zoned RC 5) that were created prior to 1979. The Variance petition seeks relief from B.C.Z.R. § 1A04.3B2b, (1) to allow a set back of 120 ft. in lieu of the required 150 ft. from the c/line of Greenspring Avenue which is a collector road; and (2) to allow a setback of 30 ft. in lieu of the required 50 ft. from any lot line other than a street. 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 Joanne Henderson and Bruce E. Doak. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of protest or opposition. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations.

Zoning Advisory Committee (ZAC) comments were received and are included in the file. The only substantive comment was submitted by the Department of Planning (DOP), dated June

5, 2013. The Department indicated Petitioner had supplied for its review (in response to a memorandum dated May 7, 2013) elevation drawings and other materials that enabled it to make the requisite findings under the RC 5 performance standards, and to express support for the petition.

The subject property consists of two lots, which total 1.26 acres and are zoned RC 5. The lots were created in 1937 (Parcel 1 shown on Plan, 0.59 acres +/-) and 1949 (Parcel 2, 0.67 Ac +/-), long before the present day RC 5 regulations. The Petitioner proposes to combine the lots and construct a single family dwelling thereon, but to do so requires zoning relief.

With regard to the petition for Special Hearing, the relief sought is relatively modest, and the equities appear to be in the Petitioner's favor. Her family has owned those lots for many years, and they also own a large farm (approximately 30 Ac +/-) situated directly across Greenspring Avenue from the subject property. As seen on the aerial photo (Exhibit 3), the area has many other modest homes on lots less than 1.25 acres and this proposal is therefore compatible with the existing neighborhood.

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. As seen on the plan, the lots are of irregular dimensions, roughly approximating an inverted triangle. In addition, the lots were created many years before Baltimore County enacted its zoning regulations. As such, the property is unique. The Petitioner

would experience a practical difficulty if the regulations were strictly enforced, since she would be unable to construct a dwelling on these lots.

Finally, I do not believe the grant of variance relief would endanger the public's health, safety and 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 7th day of June 2013, by this Administrative Law Judge, that Petitioner's request for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to allow a combined property area (resulting from a combination of parcels 1 & 2 as shown on the siteplan, Exhibit 1) of less than 1.5 acres and a density less than 0.5 for existing lots that were created prior to 1979, be and is hereby GRANTED.

IT IS FURTHER ORDERED that Petitioner's request for Variance pursuant to B.C.Z.R. § 1A04.3B2b, (1) to allow a set back of 120 ft. in lieu of the required 150 ft. from the c/line of Greenspring Avenue which is a collector road; and (2) to allow a setback of 30 ft. in lieu of the required 50 ft. from any lot line other than a street, 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 her 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.

