

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(11804 Manor Road)	*	OFFICE OF
11 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Estate of Maurice J. Duca		
	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
	*	Case No. 2020-0199-SPHA
Petitioners		
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of the Estate of Maurice J. Duca, legal owner (“Petitioner”). The Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve a non-conforming lot which was created October 10, 1952 and prior to the effective date of Baltimore County Bill 73-2000. In addition, a Petition for Variance was filed pursuant to § 1A07.8.B.5.a.2 , of the BCZR to permit a setback of 48 ft. from a principal building in lieu of the required 80 ft. and per § 1A07.8.B.5.b of the BCZR to permit a setback of 50 ft. from the adjacent property used as pasture in lieu of the required 200 ft.

Due to COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted.

Paula Cross, Personal Representative of the Estate of Maurice Duca appeared in support of the requests. Herbert Burgunder, Esq. represented Paula Cross. Bruce E. Doak, a licensed land surveyor, also appeared. He prepared the site plan, which was marked and accepted into evidence as Petitioners’ Exhibit 1. There were no protestants or interested persons in attendance. A Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”) and they did not oppose the relief.

The property is approximately .0518 acres and is zoned RC 6. Mr. Doak explained that the plat was recorded in 1952 at liber 2890 folio 553. The creation of the lot preceded the enactment of the RC 6 zoning classification (Bill No. 73-2000). Mr. Burgunder pointed out that pursuant to BCZR § 1A07.8.B.4 “[a]ny lot or parcel of land lawfully existing on the effective date of Bill 73-2000 may be developed with a single dwelling, regardless of the existence of forest patch or forest conservation areas.” This is such a lot and only one dwelling is proposed on the plan. I therefore find that the special hearing relief should be granted.

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).

The parcel in question was created prior to the enactment of the current applicable zoning regulations. It is wooded and bounded on two sides by other residences and at the rear by pasture land. It is therefore sufficiently unique within the legal meaning of the term. The petitioner would experience hardship and practical difficulty if the variance relief is denied because they would be unable to develop the property. I find that the variance can be granted within the spirit and intent of the BCZR, and without causing harm to the public health, safety, or welfare. This finding is buttressed by the fact that there is no opposition from the community or from any county agency.

THEREFORE, IT IS ORDERED this **10th** day of **December, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve a non-conforming lot which was created

October 10, 1952 and prior to the effective date of Baltimore County Bill 73-2000 is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief pursuant to § 1A07.8.B.5.a.2, of the BCZR to permit a setback of 48 ft. from a principal building in lieu of the required 80 ft. and per § 1A07.8.B.5.b of the BCZR to permit a setback of 50 ft. from the adjacent property used as pasture in lieu of the required 200 ft. is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at his own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

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

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlm