

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(14110 Blenheim Road)	*	OFFICE OF
10th Election District		
3rd Council District	*	ADMINISTRATIVE HEARINGS
Zachary F. Fisher & Emily E. Fisher		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2021-0110-SPHA
* * * * *		

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 Zachary F. Fisher and Emily E. Fisher, Petitioners. The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) § 500.7 to amend the minor subdivision of "The Lands of Lou G. Miller," Lot 3 only.

A Variance from BCZR §1A04.3.B.2.b to allow a proposed dwelling with a side yard setback of 37 ft. in lieu of the required 50 ft.

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

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and Department of Environmental Protection and Sustainability (“DEPS”), they did not oppose the requested relief. The conditions proposed by DEPS will be incorporated into the Order.

Zachary F. Fisher appeared at the hearing in support of the Petition. John Gontrum, Esquire appeared and represented the Petitioners. Mitch Ensor of Bay State Land Services, Inc. also appeared. He was accepted as an expert in land planning and in the BCZR. The site plan that he

prepared was admitted as Petitioners' Exhibit 2. There were no protestants or interested citizens in attendance at the hearing.

RECORD EVIDENCE

The property is approximately 2.199 acres and is zoned RC 5. Mr. Gontrum explained that the site is Lot 3 of a minor sub-division that was recorded in 2015. (Petitioners' Exhibit 4). The site is on Blenheim Road near its intersection with Sweet Air Road. Mr. Gontrum explained that the site is currently entirely wooded and that there is a forest buffer and forest conservation easement covering a large portion of the rear of the lot. These easements "throw" a 35 foot setback. In addition, the septic reserve area is located at the front of the site and must be set back 100 feet from the well of the property across the road. Finally, there are significant topographical features on the site, such that the proposed building site is on the only level area of the lot. These features dictate that the proposed dwelling be pushed a few feet closer to the adjoining Lot 2 (upon which the same builder – Battaglia Homes – is building another home). This modest reconfiguration of the building site therefore necessitates both the special hearing and variance relief.

SPECIAL HEARING

A petition for relief under BCZR § 500.7 is in the nature of a request for a declaratory judgment. *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). And, "the administrative practice in Baltimore County has been to determine whether the proposed Special Hearing would be compatible with the community and generally consistent with the spirit and intent of the regulations." *Kiesling v. Long*, Unreported Opinion, No. 1485, Md. App. (Sept. Term 2016). In the instant case I find that the modest relief requested is within the spirit and intent of the BCZR. In its ZAC comment the DOP expressly agreed that "the proposal is within the spirit and intent of the R.C. 5 provisions."

VARIANCE

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).

As described above, the site is unique for a variety of reasons and it is these unique features that necessitate the side setback variance. If the variance were denied the Petitioners would suffer practical difficulty because they would be unable to construct the proposed dwelling. Again, I find that the variance is within the spirit and intent of the BCZR and that it will not harm the public health, safety or welfare.

THEREFORE, IT IS ORDERED this 30th day of **June 2021**, by this Administrative Law Judge that the Petition for Special Hearing from BCZR § 500.7 to amend the minor subdivision of "The Lands of Lou G. Miller," Lot 3 only, be **GRANTED**.

IT IS FURTHER ORDERED that the Variance from BCZR, § 1A04.3.B.2.b to allow a proposed dwelling with a side yard setback of 37 ft. in lieu of the required 50 ft. is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
- Petitioners must comply with the DEPS ZAC comment, a copy of which is attached hereto and make a part thereof.

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