

IN RE: <b>PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
(Lot 45 Adjacent to 9106 Hinton Ave.)	*	OFFICE OF
15 <sup>th</sup> Election District		
7 <sup>th</sup> Council District	*	ADMINISTRATIVE HEARINGS
William J. and Judith A. Kurek,		
	*	FOR BALTIMORE COUNTY
Petitioners	*	<b>Case No. 2020-0067-SPHA</b>
* * * * *		

**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 William J. and Judith A. Kurek, (“Petitioners”). The Special Hearing was filed pursuant to determine that vacant Lot 45 is not merged with adjacent developed Lot 44 known as 9106 Hinton Avenue. In addition, a Petition for Variance was filed pursuant to Baltimore County Zoning Regulations (BCZR) § 1B02.3.C.1 to permit a proposed dwelling on a lot of record 50 ft. wide in lieu of the required 55 ft. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Due to the COVID-19 pandemic, a WebEx hearing was conducted remotely by computer and/or phone participation. Petitioner, William Kurek, appeared in support of the requests and was assisted by David Billingsly. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning dated April 3, 2020. They did not oppose the requested relief, subject to proposed conditions, which will be incorporated into the Order. Additionally, a ZAC comment was received from the Department of Environmental Protection and Sustainability (“DEPS”) dated April 24, 2020.

The property is approximately 8,150 sq. ft. and zoned DR5.5. Mr. Kurek testified that his parents bought adjoining lots 44 and 45 of the Swan Point development in the 1970s and that they gifted it to him in 1988. The Swan Point plat was recorded in 1928. All the original lots were 50 ft. wide, as was permitted at the time. Aerial photos (Petitioners' Exhibits 5, 6, and 7) show that most of the residences in the area are on these single 50 ft. lots, although there are a few on 100 ft. double lots. Mr. Kurek testified that when his parents bought the property there was a residence on Lot 44. After acquiring the property from his parents Mr. Kurek and his wife constructed the existing residence on Lot 45 and razed the original residence. Mr. Kurek testified that when the original home was on Lot 44 that the adjoining Lot 45 was a vacant lot that the Kureks simply maintained. Lot 45 never had any structures on it. Conversely, after he built the existing residence on Lot 45 he razed the structure on Lot 44 and that lot was maintained as open space with no structures on it. Mr. Kurek explained that they now wish to build a new residence on Lot 44 and then sell both homes, and retire to a residence they own in Florida. They have therefore petitioned for Special Hearing relief to determine that the lots have not merged; and for a variance from the 55 ft. minimum width requirement in this DR 5.5 zone. Mr. Billingsley acknowledged that the Petitioners must comply with both the DOP and DEPS comments and conditions in constructing the proposed new residence on Lot 44.

#### 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).

The subject property is unique in that the Swan Point development was laid out long before the current DR 5.5 zoning was applied to it. I further find that strict application of the 55 ft. width requirement would result in practical difficulty and unwarranted hardship for the Petitioners. To wit, they would not be able to construct the residence on the adjoining lot while meeting the 55 ft. width requirements for both lots. Further, no increase in residential density beyond that otherwise allowed by the BCZR will occur as a result of granting this variance because both lots meet the minimum lot size regulations. In addition, the height and side yard setback regulations will be complied with. Finally, 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 and welfare. The proposed development of these adjoining 50 ft. parcels is typical of that in the neighborhood and therefore compatible.

#### SPECIAL HEARING - MERGER

As explained above, the two lots in question have been owned by the Kurek family since the 1970s when the Petitioner's parents purchased both lots. At the time there was an existing residence on Lot 44 and Lot 45 was vacant. Subsequently, Mr. Kurek and his wife built the existing residence on Lot 45 and razed the structure on Lot 44. They then maintained Lot 44 as open space. Kurek testified that other than the few months when he was building the home on Lot 45 there was never a time when there were structures on both lots. He further testified that he complied with the time restrictions imposed by the County in razing the original home once the new home was built. Based on these undisputed facts I find that no merger has occurred between the lots. *See, Mueller v. People's Counsel for Baltimore County*, 177 Md. App. 43, 101-102 (2007) (no merger occurs unless substantial, permanent structures are erected on an adjoining parcel that are used in service of the other parcel). I further find that the proposed residence complies with the

“grandfather” provisions in BCZR § 304 because the Kureks do not possess “a contiguous *vacant* or undeveloped parcel of property” that would allow them to comply with the width regulations. *Mueller, supra*, 177 Md. App. at 93 (emphasis in original).

THEREFORE, IT IS ORDERED this **1st** day of **September, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing to determine that vacant Lot 45 is not merged with adjacent developed Lot 44 known as 9106 Hinton Avenue be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to § 1B02.3.C.1 of the BCZR to permit a proposed dwelling on a lot of record 50 ft. wide in lieu of the required 55 ft. and 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.
- The property is subject to certain environmental regulations as noted in the ZAC comment, dated April 24, 2020, submitted by the Department of Environmental Protection and Sustainability (DEPS). A copy of which is attached hereto and made a part hereof.
- Prior to issuance of Permits, Petitioners must comply with ZAC comments submitted by the DOP, dated April 3, 2020, a copy of which is attached hereto and made a part hereof.

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