

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(Philadelphia Road)	*	OFFICE OF
11th Election District		
6 th Council District	*	ADMINISTRATIVE HEARINGS
Canyon Capital, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2021-0231-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 Canyon Capital, LLC (“Petitioner”) for the property located on Philadelphia Road, Kingsville (the “Property”). The Special Hearing relief was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”), §1A04.3.B.1.b(1) to permit the alteration of the minimum lot size requirement for a single family dwelling as shown on the site plan. Variance relief was also requested from BCZR, §1A04.3.B.1.a to permit a single family dwelling on a lot having a lot size of 1 acre in lieu of the required 1.5 acres, and from §1A04.3.B.2.b to permit a dwelling front yard setback of 130 ft. in lieu of the required 150 ft. and a side yard setback of 28 ft. in lieu of the required 50 ft.

Due to the ongoing COVID-19 restrictions, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. The Petitioner, Frank Weaver, a member of Canyon Capital, LLC, appeared in support of the Petition along with Scott Lindgren, a licensed surveyor with Dietz Surveying who prepared a site plan (the “Site Plan”). (Pet. Ex. 1). Jason Vettori, Esquire and Smith, Gildea & Schmidt, LLC represented the Petitioner. There were no other interested persons in attendance at the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), Department of Environmental Protection and Sustainability (“DEPS”), and Development Plans Review (“DPR”) which agencies did not oppose the requested relief.

FACTUAL FINDINGS

The case proceeded by proffer by Mr. Vettori. Mr. Lindgren was accepted as an expert in surveying. (Pet. Ex. 2). The Property is 1.00 acres+/- and is an unimproved, elongated lot which fronts on Philadelphia Rd. (Pet. Ex. 1). It is zoned Rural Residential (RC 5). The Petitioner also owns the adjacent property which is improved with a dwelling. Aerial photographs were provided which show that the Property is immediately surrounded by other residential properties. (Pet. Exs. 7A, 7B). Petitioner is proposing to construct a 2,288 sf single family home which would be served by private well and septic. The opinion of a title attorney was submitted which confirmed that the Property and adjacent parcel were created on or before 1927. (Pet. Ex. 6).

Due to its RC5 zoning, the Property is not able to meet either the minimum 1.5 acre lot size, required front yard setback from Philadelphia Rd. of 150 ft., or the 50 ft. required side yard setbacks. Mr. Vettori explained that the Property is unique by its elongated shape and small size, the combination of which are unlike other surrounding residential properties. He explained that the unique features prevents the Property from meeting the RC5 requirements and as such, a home could not be built on the Property. He added that the Petitioner will meet all performance standards required under BCZR, §1A04.4

SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning

regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (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). BCZR, §1A04.3.B.1.b. allows this Petitioner to seek Special Hearing relief to alter the minimum lot size. Accordingly, given that the Property is a single lot of record, which is not part of a subdivision, and was in existence on or before 1927, I find the Special Hearing relief is appropriate and is within the spirit and intent of the BCZR.

VARIANCE

With respect to the requested variance, a variance request involves a two-step legal analysis, 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 Property is unique due to its size and shape. I also find, based on the uncontroverted evidence, that the Petitioner would suffer a practical difficulty and unreasonable hardship if the

proposed road frontage and side yard setbacks were not granted because a modest sized dwelling could not be constructed. I also find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED this 8th day of **November 2021**, by this Administrative Law Judge that the Petition for Special Hearing from BCZR, §1A04.3.B.1.b(1) to permit the alteration of the minimum lot size requirement of 1.5 acres for a single family dwelling to 1 acre as shown on the Site Plan (Pet. Ex. 1) be, and it is hereby, **GRANTED**.

IT IS FURTHER ORDERED that the Site Plan (Pet. Ex. 1) shall be incorporated into and made part of this Order.

IT IS FURTHER ORDERED that the Variance from BCZR, §1A04.3.B.1.a to permit a single family dwelling on a lot having a lot size of 1 acre in lieu of the required 1.5 acres be and it is hereby **MOOT**;

IT IS FURTHER ORDERED that the Variance from BCZR, §1A04.3.B.2.b to permit a dwelling front yard setback of 130 ft. in lieu of the required 150 ft. and to permit a side yard setback of 28 ft. in lieu of the required 50 ft. be, and they are hereby, **GRANTED**.

The relief granted herein shall be subject to the following:

1. 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 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, 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.

A handwritten signature in black ink that reads "Maureen E. Murphy". The signature is written in a cursive style with a large, stylized 'M' and 'E'.

MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm