

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(Lot 3A – Catherine Avenue)	*	OFFICE OF
15 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
David & Anna Quintero		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Richard Perrara		
Contract Purchasers	*	Case No. 2021-0165-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 Davina and Anna Quintero, Petitioners. The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) § 500.7 to confirm that a merger did not take place between this property and the property at 911 Catherine Avenue. The Variance is requested from BCZR § 1B02.3.C.1 to permit a proposed dwelling to have a lot width of 50 ft. in lieu of the minimum required 55 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.

A substantive Zoning Advisory Committee (ZAC) note was received from the Department of Planning (DOP) indicating that they are opposed to the requested relief. Anna Quintero appeared at the hearing in support of the Petition. John Mellema and Benjamin Gary of John Mellema Surveyors assisted the Petitioners. The site plan that was prepared and sealed by Mr. Mellema was admitted as Petitioner’s Exhibit 1. The adjacent property owner, Natalie Lybrook, also attended to voice her opposition to the requested relief.

RECORD EVIDENCE

The property is approximately 15,000 sq. ft. and is zoned DR 5.5. It is 50' wide and the DR 5.5 zone requires a minimum lot width of 55', which is why the variance is requested. According to the testimony and evidence, in 1969 the Boulevard Christian, which owns the adjacent property to the east of the subject parcel, conveyed this 50' wide parcel to the former owners of 911 Catherine Avenue. In 1995 the former owners of 911 Catherine Avenue (known as Lot 3) conveyed that property to David and Gloria Quintero. Then, in 1998 those same parties conveyed the subject property (known as Lot 3A) to the Quinteros, who then owned both parcels in fee simple. According to Anna Quinteros, between 15 and 20 years ago her father built the "shed" on Lot 3 and used it for the family's needs while they resided at 911 Catherine Avenue. The site plan depicts a long, paved, horseshoe-shaped driveway that straddles both Lot 3 and 3A and it was presumably built at or around the time the shed was built, although the record is unclear on this point. In any case, the driveway creates the appearance of one undivided lot, and use of it required traversing both lots for ingress and egress.

In 2012 Mrs. Quintero conveyed all her interest in Lot 3 to Mr. Quintero, and Mr. and Mrs. Quintero conveyed all their interest in Lot 3A to their daughters, the current Petitioners. After his death in 2019, Mr. Quintero's personal representative conveyed his interest in Lot 3 (911 Catherine Avenue) to an entity known as TI Holdings, LLC. In September 2020 that entity conveyed 911 Catherine Avenue to Ms. Lybrook and two other individuals, "excluding Lot 3A." The Petitioners, Anna and Davina Quintero now seek to sell Lot 3A to a Mr. Richard Perrera, who evidently intends to construct a dwelling on it. Ms. Lybrook testified that she offered the Petitioners \$20,000 to purchase Lot 3A but they declined the offer.

There was no evidence presented concerning any unique features of Lot 3A, other than its long narrow dimensions.

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 Lots 3 and 3A did in fact merge during the period of time between 1998 and 2019 when they were owned by the Quintero family. *See, Remes v. Montgomery County*, 387 Md. 52 (2005) (as in the instant case two contiguous lots were held in joint ownership and the owners constructed a driveway and pool straddling both lots and used the lots as one for many years). The fact that Lot 3A has a separate tax account is not dispositive, it is the use of the lot that determines whether merger has occurred.

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 noted above, there is nothing unique about the site other than its long narrow dimensions. This is not enough, in and of itself, to satisfy the common law test, because “the authority to grant a variance should be exercised sparingly and only under exceptional

circumstances.” *Mueller v. People’s Counsel for Baltimore County*, 177 Md. App. 43, 71 (2007). This is because “a variance is an authorization for that which is prohibited by a zoning ordinance.” *Cromwell v. Ward, supra*, 102 Md. App. at 699. And because “citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations.” *Salisbury Bd. Of Zoning Appeals v. Bounds*, 240 Md. 547, 555-56 (1965). Therefore, “[t]he burden is on the applicant to show facts to warrant a variance,” and “the specific need for the variance must be substantial and urgent and not merely for the convenience of the applicant.” *Mueller*, 177 Md. App. at 70.

In sum, even if the two lots have not merged – and that is perhaps a close question – a variance would still not be warranted under the controlling legal precedents.

THEREFORE, IT IS ORDERED this 30th day of **September 2021**, by this Administrative Law Judge that the Petition for Special Hearing from BCZR § 500.7 to confirm that a merger did not take place between this property and the property at 911 Catherine Avenue is hereby **DENIED**.

IT IS FURTHER ORDERED that the Variance from BCZR, § 1B02.3.C.1 to permit a proposed dwelling on a lot width of 50 ft. in lieu of the minimum required 55 ft. is hereby **DENIED**.

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