

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(518 Kent Avenue)	*	OFFICE OF
1st Election District		
1 st Council District	*	ADMINISTRATIVE HEARINGS
Scott Faust and Theresa Faust		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Maxim Building Group, Inc.	*	Case No. 2021-0176-SPHA
Contract Purchaser/Lessee		
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 Scott and Theresa Faust, Legal Owners and Maxim Building Group, Inc., Contract Purchaser/Lessee, (“Petitioners”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) § 500.7 to confirm a merger did not occur between lots and to allow a buildable lot with 4,800 sq. ft. in lieu of the required 6,000 sq. ft.

A Variance from BCZR § 1B02.3.C.1 to permit a proposed dwelling with both side yard setbacks of 5 ft. in lieu of the required 10 ft. and a lot width of 40 ft. in lieu of the 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.

The Zoning Advisory Committee (“ZAC”) comments were received and are made part of the record of this case. There were no adverse ZAC comments submitted by any of the County reviewing agencies.

Ben Gary, a surveyor with the firm John Mellema Surveyors attended and assisted the Petitioners at the hearing. The site plan prepared and sealed by Mr. Mellema was admitted as Petitioners' Exhibit 1. There were no protestants or interested citizens in attendance at the hearing.

RECORD EVIDENCE

The property is approximately 4800 sq. ft. and is zoned DR 5.5. Mr. Gary explained that the site consists of two contiguous 20' wide lots – lots 55 and 56 – of the “Catonsville Heights” subdivision, which was recorded prior to the application of the DR 5.5 zoning. In short, these were buildable lots at the time of recordation. The Petitioners purchased the lots in 1996 and have paid taxes on these lots under a discrete tax ID since that purchase. They also own the adjoining lots 57 and 58 on which sits their principal residence. Mr. Gary explained that Mr. Faust is experiencing health problems and that the sale of these lots is needed to supplement the Faustus' income. The lots in question are long and exceedingly narrow, and are the only undeveloped lots on the street. The combined 40 foot lots on either side of the subject parcel are both occupied by single family homes such as the one proposed.

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 the Petitioners seek a declaration that a small wooden shed structure on lot 56 has not caused this lot to merge in its entirety with the adjacent lot 57. The evidence demonstrates that the structure in questions was not substantially or continuously used by the

Fausts or any predecessors residing in the principal residence on Lots 57 and 58. I therefore find that no merger has occurred. *See, e.g., Mueller v. People's Counsel*, 934 A.2d. 974, 1006 (Md. App. 2007).

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 due to its long and narrow dimensions. This causes the need for the variance. If the variance were denied the Petitioners would suffer practical difficulty because they would be unable to convey the parcel for the construction of the proposed dwelling, and would not realize the financial return they expected when they purchased the lots 25 years ago. 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 **28th** day of **September 2021**, by this Administrative Law Judge that the Petition for Special Hearing from BCZR § 500.7 to confirm a merger did not occur between lots is hereby **GRANTED**.

IT IS FURTHER ORDERED that the Variance from BCZR, §1B02.3.C.1 to permit a proposed dwelling with both side yard setbacks of 5 ft. in lieu of the required 10 ft. and a lot width of 40 ft. in lieu of the required 55 ft., and to allow a buildable lot with 4,800 sq. ft. in lieu of the required 6,000 sq. 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.

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