Tammy Zahner

From: Kevin McDonough <kevinmcdonough@comcast.net>
Sent: Monday, November 14, 2022 7:04 PM
To: Appeals Board
Cc: Peter Max Zimmerman; lschmidt@sgs-law.com
Subject: Case# 2022-0140-SPHA (414 Katherine Ave)
Attachments: 414 Katherine Ave BOA Letter.pdf; 414 Katherine Exhibits .pdf

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Good Evening,

Attached please find written testimony submitted for the above referenced case which is pending before the Board of Appeals.

Counsel for the petitioner and peoples counsel are copied on this email.

Thank you.

Regards,

Kevin M. McDonough
President
Rockaway Beach Improvement Assoc.

Sent from my iPhone

www.turkeypoint.org

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VIA E-MAIL

RE: 414 Katherine Avenue | Essex, MD 21221 - Case # 2022-0140-SPHA (Before the Board of Appeals)

November 14, 2022

Dear Members of the Baltimore County Board of Appeals,

The Rockaway Beach Improvement Association Inc. (RBIA), is a community association located in the Essex area of Eastern Baltimore County. Our organization represents the Cape May and Turkey Point Peninsulas. The subject property at issue in this case is located within the boundaries of our community association. Additionally, the community association provided written testimony and comments in the initial proceeding before the Administrative Law Judge. Our organization wishes to weigh in as an interested party and provide written comments to the Board of Appeals regarding the case and concerns of the community regarding petitioner's appeal of their variance denial.

The subject property is an undersized lot located in the Cape May community on the waterfront of Norman Creek. The lot is currently unimproved and vacant. The subject property is 50 feet in width at the roadside, per the record plat and deed. Homes exist on both sides of the property, one of which is on a lot approximately 30 feet in width (416 Katherine Avenue). It is important to note that the property at issue also has a very steep grade towards the water, where there exists a several foot change in elevation.

During the initial proceedings before the Administrative Law Judge, petitioners sought a special hearing to permit an undersized lot, and also sought variance relief for the construction of a dwelling which would not conform with the Baltimore County Zoning Regulations, which require a sum of 25 feet for side yard setbacks. The Honorable Judge Paul Mayhew issued an order which permitted the undersized lot but denied the variance relief which was sought. Feeling aggrieved by that decision, petitioner in this case filed a timely appeal which brought the issue before the Board of Appeals.

The community takes issue with the requested variance relief and does not believe that such relief is warranted, necessary or appropriate. While we would concede that the property is unique because of its creation as part of a record plat from before the enactment of Baltimore County's Zoning Laws, we do not believe that the petitioner would experience any undue hardship by having to comply with the required setbacks for properties with DR 3.5 zoning. Compliance with the zoning regulations would allow petitioner to construct a home approximately 25 ft in width and of ample length. Such a structure would afford petitioner a reasonable use of the property that would not infringe on the neighboring property owners rights, views, or peaceful enjoyment of their properties. Denial of the requested variance relief would not deprive the petitioner of their property rights to build a reasonable sized dwelling on the property, and would also comply with existing case law, which makes clear that "citizens [of a given county or municipality] are entitled to strict enforcement of the existing zoning regulations." (Sailsbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 555-56 (1965)). The strict enforcement to which the citizens of Baltimore County, the adjoining property owners

and community at large are entitled to would be to uphold the denial of the variance relief requested, thus requiring the petitioner to comply with the required setbacks.

The community also wishes to raise the point that the Administrative Law Judge approved the original petition, which included relief to permit an undersized lot. That approval was grounded in Section 304 of the Baltimore County Zoning Regulations, which states:

§ 304.1. Types of dwellings allowed; conditions.

[Bill Nos. 64-1999; 28-2001]

Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

Under this provision of the Zoning regulations, a dwelling may be constructed on an undersized lot if the three requirements contained within the statute are met. We would draw the Board's attention to BCZR 304.1.B which requires that all other requirements of the height and area regulations are complied with. Under this provision, a variance being permitted on an undersized lot would run contrary to that requirement and would therefore not allow the property to meet the provisions set forth in BCZR 304.1

We would respectfully request that the board uphold the decision of the Administrative Law Judge and that the variance relief requested by petitioners be DENIED.

Sincerely,

Kevin McDonough
President
Rockaway Beach Improvement Association Inc.

Certificate of Service:

I hereby certify that on this 14th day of November in the year 2022 that a copy of this document was sent via e-mail to the following:

Larry Schmidt, Esq. – Attorney for Petitioner
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Peter Max Zimmerman – Peoples Counsel for Baltimore County
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X_____ 11/14/22