

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1500-1508 Riderwood Dr.)		
8 th Election District	*	OFFICE OF
3 rd Councilmanic District		
Robert C. Waldhauser/ <i>Legal Owner</i>	*	ADMINISTRATIVE HEARINGS
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2014-0115-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed by David Billingsley, on behalf of the legal owner, Robert C. Waldhauser. The Petition was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) seeking: (1) a waiver pursuant to B.C.Z.R. §500.6; §3112.0 (Building Code); and Baltimore County Code (B.C.C.) §§ 32-4-414 & 32-4-107(a); (2) to permit fill to be placed in a riverine floodplain; and (3) to permit a retaining wall to be constructed in a riverine floodplain in lieu of the required 20 ft. setback from a riverine floodplain.

Appearing at the public hearing in support of the requests was Robert C. Waldhauser, property owner, and David Billingsley, from Central Drafting & Design, Inc, who prepared the site plan and is assisting the Petitioner in the permitting process. Several citizens attended the hearing and opposed the Petition. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Zoning Advisory Committee (ZAC) comments were received from the Bureau of Development Plans Review (DPR) dated November 20, 2013 and from Department of Public Works (DPW) dated November 22, 2013.

The subject property is zoned BL, and is improved with a commercial building and parking lot identified as #1500-1508 Riderwood Drive. The Petitioner’s property adjoins land owned by a church, and Mr. Billingsley stated that the owners of the church property approached Petitioner

to seek his assistance with the erosion taking place between these properties. The Petitioner obtained permits from Baltimore County and began constructing a retaining wall at the rear (north) portion of his existing parking lot. That wall was apparently 90% complete when Dave Thomas, an engineer employed by Baltimore County, contacted Petitioner and told him to cease construction because the permits were issued in error. The point of contention concerns whether or not the retaining wall and fill material would increase the risk of flooding, and the Petitioner sought a “waiver” to allow the improvements to remain in the floodplain.

The hearing was concluded on January 10, 2014, and Petitioner was to obtain from a licensed engineer a study and certification that the improvements would not increase the risk of flooding. The Petitioner submitted such a study to the DPW, and it is sealed by Geoffrey A. Tizard, II, P.E. The Director of DPW, by memorandum dated November 22, 2013, indicated that agency did not oppose the waiver, but the memorandum also set forth several conditions that agency requested to be included in any Order. Jeanette Tansey, R.L.A., on behalf of DPR, also indicated her agency did not object to the granting of the waiver.

Eric Rockel and other neighbors opposed the relief, and expressed dismay at the number of errors committed by Baltimore County in the processing of permits for this property. Mr. Rockel also noted that Lutherville has a history of flooding problems, and he submitted a map (Protestants’ Exhibit 1) showing that Baltimore County has purchased certain parcels in the area due to flooding concerns. Mr. Rockel also stated that flood insurance rates in the area are high, and he did not believe the Petitioner could satisfy the “exceptional hardship” standard which must be met before a waiver can be granted. BCC § 32-8-303(a)(2). The Office of Administrative Hearings (OAH) also received a letter dated March 4, 2014 indicating the Lutherville Community Association did not support Petitioner’s requests.

Floodplain issues are exceedingly complex, regulated by State, County and Federal law, and require the expertise of professional engineers. In this case, Petitioner has submitted a certification from a professional engineer that the improvements will not increase the risk of flooding. The neighbors express concern about this point, but they did not present any expert testimony to the contrary. Smith Sand & Gravel , Inc. v. Dept. of Water Resources, 270 Md. 652, 665 n.1 (1974)(questions concerning boundaries of and potential impacts upon flood plain must be resolved by “competent engineering study”). Mr. Billingsley argues, in opposition to Mr. Rockel’s point, that the Petitioner has established the requisite exceptional hardship in that both Petitioner and the church have had to contend with the slope and associated erosion between the properties, which has been exacerbated by people riding dirt bikes and ATVs in the area.

The community does not believe this was the impetus for the improvements; they believe Petitioner wanted to expand his parking lot. But there is no indication that the Petitioner does not have sufficient parking for the commercial building on site, and in any event it does not seem like the 2,809 square feet would provide much in the way of additional parking. Assuming the erosion problems existed as testified by Petitioner, then it is arguable that without relief or the waiver such a condition would present an exceptional hardship to the owner of the commercial property.

At bottom, I do not believe the improvements are unattractive or mar the appearance of the community. To the contrary, I think the photos show that the wall improves the look of the property. I am mindful that aesthetics are not the primary consideration here, and that is why I am inclined to rely upon the opinion of the engineer as concerns the potential for increased

flooding. I will incorporate the conditions proposed by the DPW in its November 22, 2013 memorandum, which will provide further assurances to the community.

THEREFORE, IT IS ORDERED this 21st day of May 2014, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) seeking: (1) a waiver pursuant to §500.6 (BCZR); §3112.0 (Building Code); and Baltimore County Code (B.C.C.) §§ 32-4-414 & 32-4-107(a); (2) to permit fill to be placed in a riverine floodplain; and (3) to permit a retaining wall to be constructed in a riverine floodplain in lieu of the required 20 ft. setback from a riverine floodplain, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner must comply with items 2, 3, & 4 set forth in the DPW memorandum attached hereto and incorporated herein.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln