

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(403 Chapelwood Lane)		
8 th Election District	*	OFFICE OF
3 rd Councilmanic District		
Earl & Nina Purdue/ <i>Legal Owners</i>	*	ADMINISTRATIVE HEARINGS
Petitioners	*	FOR BALTIMORE COUNTY
	*	Case No. 2014-0108-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed by Earl & Nina Purdue, the legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a kitchen extension in the rear of the dwelling, within a 100-year riverine floodplain.

Appearing at the public hearing in support of the request were Earl & Nina Purdue, property owners. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no Protestants or interested citizens in attendance at the hearing, and the file does not contain any letters of opposition. In fact, Petitioners’ long-time neighbors (Mr. & Mrs. Naeny) provided a letter expressing support for the project.

By memorandum dated December 23, 2013, the Director of the Department of Public Works (DPW) recommended the floodplain waiver be denied, since his office had not been provided any “plans or calculations” showing that the waiver would not negatively impact other dwellings or increase the risk of flooding. Terry Curtis, an engineer employed by the DPW, attended the hearing and Mr. Purdue (an architect) supplied him with a comprehensive study (Exhibit 2) prepared by Biohabitats, Inc., which happens to be an on-call contractor for Baltimore County. That study, prepared by a licensed engineer, concluded that the waiver would not increase the risk of flood conditions or negatively impact surrounding properties.

The DPW reviewed the study, and on January 3, 2014, that agency sent a memorandum to this Office, indicating that “we feel comfortable that the approval of the addition would have no adverse effect on other properties.” Even so, the DPW recommended denial of the petition, given the property has had previous flood loss insurance claims, which it believes undermines the fiscal integrity of the National Flood Insurance Program (NFIP). I do not believe that is a valid basis on which to deny the petition, for two reasons.

First, the Petitioners have met the requisite standard for approval of such a waiver under the County Code, as conceded by the DPW. The Code (BCC §§ 32-8-303 & 32-4-414) seeks to ensure that any permitted activity not increase the “existing base flood elevation,” and the consultant (a licensed engineer) employed by Petitioners opined that “the proposed improvements at the [Petitioners’] residence would have no effect on local flood elevations.”

Secondly, with regard to the insurance claims, it is true that County law seeks to ensure its citizens access to the NFIP (BCC § 32-8-201), and, in approving waivers, to “avoid extraordinary public expense.” BCC § 32-8-303(a)(3). In my opinion, the kitchen addition proposed to the dwelling would not jeopardize the soundness of the NFIP or entail extraordinary public expense. As seen on the plan (Exhibit 1) the kitchen addition will cause only a modest incursion (approximately eleven (11) feet) into the floodplain, and the living space will be only at the second floor level, while the ground floor will have a supporting stone wall structure that is unenclosed. In addition, the Petitioners submitted detailed elevations which reveal that the addition will be attractive and constructed with quality materials.

The NFIP has been the subject of several recent news stories, and many inland property owners are justifiably perturbed at having to “subsidize” those who build (and rebuild) in coastal areas and suffer (invariably) catastrophic losses. In fact, Congress has recently overhauled the

NFIP (the Biggert-Waters Flood Insurance Reform Act of 2012), and the amendments will significantly reform the NFIP and greatly increase most owners' insurance premiums based on flood risk. As such, if the Petitioners' property poses such a risk, insurers will take that into consideration and price the coverage accordingly.

Pursuant to the advertisement, posting of the property, and the public hearing, I find that Petitioners' Special Hearing request should be granted.

THEREFORE, IT IS ORDERED this 6th day of January 2014, by this Administrative Law Judge, that Petitioners' request for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a kitchen extension in the rear of the dwelling, within a 100-year riverine floodplain as shown on the site plan admitted as Exhibit 1, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for appropriate permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.

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