

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(4009 Briar Point Road)		
15 th Election District	*	OFFICE OF
6 th Councilmanic District		
Thomas & Victoria Baird	*	ADMINISTRATIVE HEARINGS
Petitioners	*	FOR BALTIMORE COUNTY
	*	Case No. 2014-0283-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of the legal owners. The Petition was filed pursuant to §1A04.3.B.1.b.1 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a proposed replacement dwelling with side yard setbacks of 18 ft. and an open projection side setback of 12 ft. in lieu of the required 50 ft. and 37.5 ft., respectively.

Appearing at the public hearing in support of the requests was Thomas & Victoria Baird. Bernadette Moskunas with Site Rite Surveying, Inc. appeared with the Petitioners. The neighbors on either side of the subject property attended the hearing and objected to the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP), the Bureau of Development Plans Review (DPR), and the Department of Environmental Protection and Sustainability (DEPS).

Following the hearing, Ms. Moskunas notified the OAH that the Zoning Office failed to include in the Petition (which it drafted, according to Ms. Moskunas) the minimum lot size (i.e., 1.078 acres in lieu of the required 1.5 acres) as an aspect of special hearing relief being sought. Even so, the hearing notice substantially complied with the BCZR, and alerted the community

that Petitioners sought to construct a new dwelling on the lot. Accordingly, the Petition will be amended to reflect that relief is also sought regarding the lot size.

The subject property is 1.078 acres and is zoned RC 5. The property is improved with a single family dwelling, and the Petitioners stated that it suffered storm damage in Hurricane Isabel, and has been vacant for nearly 10 years. They propose to raze the existing dwelling and construct a new single family dwelling. The new dwelling would be positioned much closer to the waterfront (according to the Plan, approximately 113' from the shore line). The adjoining neighbors (Wade Henninger and Frank Orzolek) objected to the proposal, fearing that the placement of the dwelling at the location proposed would block their view of the Chesapeake Bay.

The procedure for altering the minimum lot size and setbacks in an RC 5 zone is somewhat confusing. The Regulations provide that if an owner “does not meet the minimum acreage requirement, or does not meet the setback requirement...” special hearing relief can be obtained “to alter the minimum lot size requirement.” B.C.Z.R. §1A04.3.B.1.b. Despite the ambiguous nature of this regulation, prior administrative practice and interpretation have permitted special hearing relief for both lot size and setbacks.

The alterations referenced in B.C.Z.R. §1A04.3.B.1.b. are not “variances” per se, and therefore the Petitioners do not need to satisfy B.C.Z.R. § 307, and cases interpreting that provision. It is unclear exactly what must be shown to obtain “special hearing” relief, although prior practice seems to suggest that Petitioners must make a showing similar to that required for a special exception; i.e., that the proposed use would not adversely impact the health, safety and welfare of the community.

In that regard, it seems clear (with one exception) that the Petitioners are entitled to special hearing relief. The property is improved with a dwelling that does not satisfy the current R.C. 5 regulations as to lot size or setbacks. Indeed, with a lot width of approximately 112 ft., there is no way that a dwelling could be constructed if the 50 ft. side yard setbacks were imposed. Petitioners propose to construct a new dwelling that would in fact be no more “nonconforming” than the existing home, and their lot is the same or similarly sized to those in the neighborhood.

The concern is that Petitioners propose to move the home closer to the waterfront. As shown on the site plan, the proposed location is much closer to the waterfront than adjoining homes. The neighbors complain that their view of the bay would be obstructed, and I am sympathetic to that concern. But the law does not guarantee one’s right to an unobstructed view of the water, unless the owner has obtained specific rights by way of a “view easement” or similar grant. Chesley v. City of Annapolis, 176 Md. App. 413 (2007). The R.C. 5 regulations do however require that buildings be arranged and oriented to “complement those in the surrounding vicinity.” B.C.Z.R. §1A04.4.D.1.e. In my opinion, positioning the new home no closer than 150 ft. to the existing wooden bulkhead shown on the plan would help to accomplish the goals of the R.C.5 zone site planning regulations.

THEREFORE, IT IS ORDERED this 28th day of August 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”) to permit a lot size of 1.078 acres in lieu of the required 1.5 acres, and a proposed replacement dwelling with side yard setbacks of 18 ft. and an open projection side setback of 12 ft. in lieu of the required 50 ft. and 37.5 ft., respectively, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- 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 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, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- Petitioners must comply with the ZAC comments of DEPS, DOP and DPR which are incorporated herein and attached hereto.
- Any dwelling constructed on the lot must be no closer than 150 ft. to the existing wooden bulkhead.

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