

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(523 Morris Avenue)		
8 th Election District	*	OFFICE OF
3 rd Council District		
	*	ADMINISTRATIVE HEARINGS
Julia B. Silber		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner		
	*	Case No. 2016-0123-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 Julia B. Silber, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow a waiver of the public work standards (DPW Plat DF-1) to allow for a 10.5 ft. setback in lieu of the required 20 ft. setback from the 1 ft. freeboard line of the 100 year floodplain to a dwelling.

Julia Silber and professional engineer John Motsco appeared in support of the petition. Timothy M. Kotroco, Esq., represented the Petitioner. Eric Rockel and Al Fischer, both neighbors in the area, attended and opposed the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR) and the Department of Public Works (DPW).

The subject property is 7,720 square feet and zoned DR 5.5. Petitioner purchased the house recently, and secured building permits from Baltimore County to renovate the subject property. Petitioner explained the house was in deplorable (almost unlivable) condition. When she purchased it, she wanted to construct an addition at the rear of the home and remediate the

mold and termite damage at the property. After investing substantial sums of money and time, Baltimore County issued a stop work order and directed Petitioner to obtain a waiver of the floodplain setback standards.

Mr. Motsco's firm undertook field surveys and prepared a plan depicting the floodplain and setback therefrom. Petitioner's Exhibit 1. Petitioner's house and proposed improvements are not in the floodplain; rather, they would encroach 10.5 ft. into the 20 ft. floodplain setback. Mr. Motsco opined that granting the waiver would be consistent with sound floodplain management practices. Dave Thomas, who reviews these matters on behalf of Baltimore County, indicated his agency did not oppose the petition.

While I understand and appreciate the concerns raised by Messrs. Rockel and Fischer, I do not believe Petitioner should be made to pay for Baltimore County's mistake. The neighbors correctly note that Baltimore County has in the recent past issued building permits in analogous situations; i.e., where the property was in the floodplain or setback. As such, I understand their frustration. But here the evidence indicates Petitioner sought and obtained all permits from the County, and under applicable case law, the County should in fact be estopped from denying the permit. Permanent Financial v. Montgomery Co., 308 Md. 239 (1986).

THEREFORE, IT IS ORDERED this **8th** day of **January, 2016** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 to allow a waiver of the public work standards (DPW Plat DF-1) to allow for a 10.5 ft. setback in lieu of the required 20 ft. setback from the 1 ft. freeboard line of the 100 year floodplain to a dwelling, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at her 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, Petitioner would be required to return the subject property to its original condition.
2. The 100-year floodplain area must remain undisturbed and shall not be maintained, mowed or cleared as lawn area.
3. Neither Petitioner or her agents and employees shall deposit fill dirt or other material onto the 100-year floodplain area.
4. Petitioner shall convey to Baltimore County at no cost an easement or record among the Land Records a covenant imposing use restrictions upon the 100-year floodplain area.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw