

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(18034 York Road)		
7 th Election District	*	OFFICE OF
3 rd Council District		
	*	ADMINISTRATIVE HEARINGS
RREF II SB, MD, LLC		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2016-0244-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 RREF II SB, MD, LLC, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit a tract to be developed in the RC 4 zone less than the required 3 acres under Section 1A03.4.B.1.A of the Baltimore County Zoning Regulations (B.C.Z.R.).

Surveyor Geoffrey Schultz appeared in support of the petition. Adam D. Baker, Esq. represented the Petitioner. Two neighbors attended the hearing to express concern about the location of the proposed single-family dwelling on the lot. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. No substantive Zoning Advisory Committee (ZAC) comments were received.

The subject property is 1.147 acres and zoned RC-4. The property is comprised of two separate parcels, both of which are unimproved. Petitioner filed for special hearing relief to construct a dwelling on a lot less than 3 acres, citing B.C.Z.R. §1A03.4.B.1.A. After reviewing that provision and the regulations generally, I do not believe the B.C.Z.R. contains a minimum lot size in the RC-4 zone.

In fact, the adjacent Montclair subdivision approved in 2007 is also zoned RC-4 and lots in that community vary in size between 1-2 acres. Also, B.C.Z.R. §1A03.6 concerning “optional development” in the RC-4 zone for tracts larger than 10 acres specifies a minimum lot size of 1 acre. While that regulation is not applicable in this case, I do believe (as asserted by Petitioner) it is indicative of the Legislature’s intent with regard to the minimum lot size for a single-family dwelling in the RC-4 zone.

As such, I do not believe zoning relief is required to construct a dwelling on the subject property. To the extent it is determined by a County agency or court that the subject property is in fact undersized, I believe Petitioner would still be able to construct a dwelling, pursuant to either B.C.Z.R. §§1A03.4.B.4 or 304. These are both in the nature of grandfather provisions which provide relief to owners of existing lots under certain circumstances when those lots cannot satisfy current standards. The former provision applies to those lots not meeting “minimum standards,” the boundaries for which were recorded on or before December 22, 1975. Petitioner submitted a title history reflecting the lot was created by deed in 1899. Exhibit 3.

Petitioner could also rely upon B.C.Z.R. §304 governing use of undersized single-family lots. That regulation allows an owner to construct a single-family dwelling on a lot created prior to 1955 which does not satisfy the minimum lot size, provided certain other requirements are satisfied. Petitioner does not own adjoining land and Mr. Schultz testified the proposed dwelling would satisfy the height and setback requirements for the RC-4 zone. Therefore, I believe §304 would be applicable.

THEREFORE, IT IS ORDERED this 8th day of June, **2016** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 to permit a tract to be developed in the RC-4 zone less than the required 3 acres under Section 1A03.4.B.1.A of the

Baltimore County Zoning Regulations (B.C.Z.R.), be and is hereby DISMISSED without prejudice as unnecessary.

IT IS FURTHER ORDERED Petitioner shall be entitled to construct a single-family dwelling on the subject property pursuant to B.C.Z.R. §§ 1A03.4.B.4 and/or 304.

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 its 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. Any dwelling to be constructed on the property must be no closer than 35 feet to the north and west property boundaries.
3. Prior to issuance of permits Petitioner must submit for approval by the DOP elevation drawings reflecting that the proposed dwelling is compatible with the existing homes in the Montclair subdivision and the rural character of the 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:sln