

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(7700 Crossland Road)		
3 rd Election District	*	OFFICE OF
2 nd Council District		
	*	ADMINISTRATIVE HEARINGS
Richard S. & Susan W. Lehmann		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2016-0060-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 Richard S. & Susan W. Lehmann, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) for a waiver to rebuild an existing enclosed porch in a riverine floodplain.

Richard Lehmann and Richard E. Matz, professional engineer, appeared in support of the petition. Dino LaFiandra, Esq. represented Petitioners. Richard Burch, Esq. represented a neighbor who opposed the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A substantive Zoning Advisory Committee (ZAC) comment was received from the Department of Public Works (DPW). That agency did not oppose the waiver request.

The subject property is 0.76 acres and zoned DR 2. The property is improved with a single family dwelling. The petition states the existing porch is “in a riverine floodplain” (emphasis added) but the DPW’s ZAC comment states the porch is “within 20 feet of the 100-year riverine floodplain.” That comment also states the waiver is sought to “approve a setback from the 100-year floodplain limit of less than 20 feet.” I note these discrepancies to highlight, as discussed at

the hearing, that waiver requests are not zoning matters and it is often unclear precisely what relief is sought or needed under the myriad and byzantine floodplain regulations and codes.

The County Code provides that a floodplain waiver can be granted only upon a showing of “exceptional hardship.” BCC §32-8-303. Protestant’s counsel argued that being denied the right to rebuild (and/or enlarge) the deck would not constitute an unreasonable or exceptional hardship, and I concur. Protestant’s counsel also notes a waiver action is initiated by a “request of a department director” (BCC §32-4-107) which is arguably lacking in this case as well. As such, I do not believe a waiver can be granted properly in this case.

Even so, I do not believe a waiver is required in the first instance. The Building Code of Baltimore County, adopted May 4, 2015 in Bill 40-15, contains several sections on construction in flood zones. Part 125 concerns construction in a riverine floodplain, and Part 125.1 states the general rule that no new buildings or additions shall be constructed in any riverine floodplain. No new building or addition is proposed by Petitioners. Part 125.2 concerns “Reconstruction and Repair of Existing Buildings.” That section indicates a “waiver” is required for construction of “substantial improvements” to existing buildings. Under both the Building Code (Part 123.1.1) and BCC (§32-8-101(dd)), a “substantial improvement” is one that exceeds 50% of the fair market value of the structure. The current tax assessment (which may not precisely equate to fair market value) for the structure is \$493,800.00, and it would appear the construction proposed here would not cost in excess of \$246,900.00. Assuming that is the case, I do not believe a waiver is required.

THEREFORE, IT IS ORDERED this 18th day of **May, 2016 by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 for a waiver to rebuild an existing enclosed porch in a riverine floodplain, be and is hereby DENIED.**

IT IS FURTHER ORDERED Petitioners shall be entitled to rebuild the existing enclosed porch, provided the cost to do so does not exceed \$246,900.00.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.

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

JEB:sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County