

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(1613 Dennis Avenue)		
8 th Election District	*	OFFICE OF
2 nd Council District		
	*	ADMINISTRATIVE HEARINGS
Thomas and Natalie Gabler		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2016-0208-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 Thomas and Natalie Gabler, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) seeking a waiver to permit a second story addition in a riverine flood zone.

Thomas and Natalie Gabler appeared in support of the petition. There were no protestants or interested citizens in attendance. 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). The DPW opposed the waiver request, citing Part 123 of the Building Code.

The subject property is 14,550 square feet and zoned DR 3.5. The property is improved with a single-family dwelling (SFD) constructed in 1954. Petitioners have owned the property for 15 years, and would like to construct a second floor addition to their home. Petitioners noted the “footprint” of the home would remain the same.

As a general matter, new buildings cannot be constructed in a riverine floodplain. BCC §32-8-304(2); Part 125 of Baltimore County Building Code. And the BCC stresses waiver actions are disfavored and should be “kept to a minimum.” BCC § 32-8-301(c). Waivers can only be

granted upon a showing of “exceptional hardship,” (BCC §32-8-303(a)(2)), and I do not believe Petitioners’ desire for additional living space—having lived in the home as presently configured for over 15 years—can satisfy this standard. As such, I believe the waiver request must be denied.

However, Part 125.2 of the Building Code provides that only “substantial improvements” to existing buildings require a waiver in accordance with the BCC. Under the County Code a “substantial improvement” is one that “equals or exceeds 50% of the market value of the structure.” BCC §32-8-101(dd). As such, Petitioners are entitled to alter and improve their existing home, provided the improvements do not equal or exceed 50% of the market value of the dwelling. While tax records are not necessarily determinative of a property’s “market value,” the SDAT record shows the value of the structure for tax purposes is \$118,000.00. Using that number as a reference point, I believe Petitioners would be entitled to construct a second story addition, provided the cost of the improvement is not in excess of \$59,000.00.

THEREFORE, IT IS ORDERED this 17th 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 permit a second-story addition in a riverine flood zone, be and is hereby DENIED.

IT IS FURTHER ORDERED Petitioners are entitled to construct a second-story addition to their home, provided the cost of such improvement does not exceed \$59,000.00.

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.

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln