

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(6605 Kenwood Avenue)		
14 th Election District	*	OFFICE OF
7 th Councilmanic District		
Jeffrey Foucault, Christopher Barstad &	*	ADMINISTRATIVE HEARINGS
John Butz, <i>Legal Owners</i>		
	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2014-0226-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 Jeffrey Foucault, Christopher Barstad and John Butz, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve an amendment to Case No. 99-0103-SPH for the use by two lots of a proposed minor subdivision of an existing 15 ft. ingress/egress maintenance and utility easement.

David Billingsley, whose firm prepared the site plan, appeared at the public hearing in support of the requests. Timothy M. Kotroco, Esq., from Whiteford, Taylor & Preston represented the Petitioners. Mr. and Mrs. Seeley, neighbors, attended the hearing and opposed the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. A Zoning Advisory Committee (ZAC) comment was received from the Department of Planning (DOP), dated May 28, 2014. That agency opposed the requests.

The subject property is 0.491 acres in size and is zoned DR 5.5. The Petitioners are currently processing an application for a minor subdivision to create two lots on the parcel. The lots would be 9,700 square feet and 11,725 square feet respectively, which exceeds the 6,000 square feet minimum lot size required in the DR 5.5 zone. In fact, the proposed dwellings would

also satisfy the yard setbacks for the zone, and variance relief is not requested. Petitioners indicate that the County required this zoning hearing prior to further processing of the minor subdivision. The special hearing request seeks to use the shared driveway for the two lots (assuming the minor subdivision is approved).

In 1998, the former owner of this property (which at the time also included the property known as 6601 Kenwood) subdivided the parcel into two lots: one lot contained a single family dwelling and garage (#6601) and the other lot contained a dwelling on the parcel at issue in this case. That dwelling was in poor shape, and the current owners razed the structure. Special Hearing relief was granted in 1998 which allowed “Lot 2” (which is the 0.491 acre parcel at issue here) to access the public road (i.e., Kenwood Avenue) by way of an existing 15-foot wide shared driveway (the use of which is governed by an easement agreement, Petitioners’ Exhibit 10) in lieu of the 20- foot wide strip required by the development regulations.

Following the public hearing on June 13, 2014, the parties requested that this case be stayed to allow them additional time to discuss the concerns which are identified below. The Petitioners were attempting to purchase at auction the dilapidated home at 6603 Kenwood Ave., which would provide them with an additional means of access to the rear lot(s). Counsel for Petitioners notified the undersigned and the Seeleys that his clients were not successful at the auction, and requested that an Order be issued.

The neighbors expressed concern with the adequacy of the sewer system, and stated there are frequent sewage back-ups in the area. Ms. Seeley noted that despite repeated contacts with the County (DPW has visited the property and performed “smoke tests” to see if the sewer line is intact) the problems persist. In addition, the neighbors were concerned with where mailboxes for the proposed homes would be located, as well as where garbage collection would occur. While it

is not really the proper focus of this hearing, it seems clear that the Petitioners could not install mailboxes (or garbage for collection) on the Seeley's property without their consent, and this will be an issue that needs to be addressed in connection with the subdivision and/or permit application process. The sewerage issues are troubling, and assuming the pipes and other infrastructure are in fact owned by the County (as contended by the Petitioners) it is Baltimore County's responsibility to ensure that they function properly, and that too is an issue that needs to be addressed prior to the issuance of any permits.

The DOP indicated in its ZAC comment that it opposed the request, primarily because it runs afoul of B.C.Z.R. §102.4, which requires a 30 ft. wide right-of-way for access. As noted earlier, the Petitioners (or more correctly, their predecessor in interest) obtained special hearing relief in 1998 permitting the use of an "existing 15-foot wide" driveway. Case No. 99-103-SPH. And B.C.C. §32-4-409(c), to which B.C.Z.R. § 102.4 refers, expressly permits the hearing officer to approve the use of an "existing right-of-way instead of an in-fee strip" as required by the Code.

The DOP also indicated that "permitting further subdivision" would be inconsistent with the existing pattern of lots and houses in the neighborhood. The comment did not provide any further details concerning this issue. The Petitioners are not (in this forum at least) seeking subdivision approval, and thus I do not believe this point is germane. Also, based on my review of the Plan, the proposed lots would be as large as those in the vicinity, and the Petitioners do not seek relief from setback or other area requirements. The DOP comment also states that the agency does not support "front to rear dwelling orientations" as shown on the Plan. But Petitioners stated that the dwelling that existed for nearly 100 years (as noted, it has been razed) on this lot was oriented in exactly that fashion: i.e., the front of that dwelling faced the rear of

6601 Kenwood Avenue. I also believe that the existing and proposed landscaping, as shown on the Plan, will ameliorate any concerns regarding the orientation of the proposed homes.

THEREFORE, IT IS ORDERED this 29th 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 approve the use by two lots of a proposed minor subdivision of an existing 15 ft. ingress/egress maintenance and utility easement, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. 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 their 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.

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