

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>(2015-2021 Rocky Point Road)</b>		
15 <sup>th</sup> Election District	*	OFFICE OF
7 <sup>th</sup> Council District		
Wayne & Diane Totaro,	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
	*	FOR BALTIMORE COUNTY
Petitioners		
	*	<b>Case No. 2017-0049-SPH</b>

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**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 Wayne & Diane Totaro, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R) to permit a resubdivision of Lot 1 of Lands of Cora Porter with no additional development based on existing non-conforming residences constructed prior to 1945. J. Wayne Totaro, Diane Totaro and professional engineer Rick Richardson appeared in support of the petition. John B. Gontrum, Esq. represented the Petitioners. 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 Environmental Protection and Sustainability (DEPS). That agency did not oppose the request, but noted Petitioners would need to comply with Critical Area regulations.

The subject property is 13.30 acres in size and zoned RC 5 & RC 20. The site is at this point comprised of two lots and improved with six single family dwellings. This is an unusual case given the number and positioning of the dwellings on this waterfront property. Though the special hearing request references a “resubdivision,” this order will not approve or disapprove a

subdivision as such. Counsel noted Petitioners will proceed in the next phase to seek subdivision approval from the DRC. Petitioners seek in this case to establish, as a matter of zoning, the legality of the existing residences as lawful nonconforming uses. No development is proposed at this time.

Mr. Totaro testified this property has been held in tact by his family for over 100 years. He grew up on this property and can testify on personal knowledge the dwellings shown on the plan have been in place since at least 1950. Mr. Totaro stated family members told him the dwellings were constructed in the late 1930s. Counsel presented an aerial photo from 1949 (Exhibit 7), a USGS survey from 1947 (Exhibit 6) and a 1971 zoning map based on a “1955 photogrammetric” (Exhibit 5), all of which depict the dwellings in question.

In terms of the applicable law, counsel presented a portion of the 1949 Baltimore County subdivision regulations, which indicate that every lot on a proposed plat must have an area of at least 20,000 sq. ft. Exhibit 3. Counsel also presented a portion of the 1945 zoning regulations (Exhibit 4). In 1945, the property was zoned “A” residential, and the regulations required each lot to have an area of “not less than five thousand square feet.”

Petitioners propose to resubdivide Lot 1 as shown on the plan. If approved, Lot 1 would have one single family dwelling (2021 Rocky Point Road) and would be 8.57 acres in size. Lot 2 (which is not really at issue in this case) would have one single family dwelling (2011 Rocky Point Road) and newly-created Lot 3 would have four single family dwellings (2101, 2101A, 2103 and 2105 Rocky Point Road) and be approximately 1.85 acres in size. The plan contains a density chart (note 3) which indicates the RC-5 zoned portion of the property would yield 3 lots, which is in fact what Petitioners propose.

So the only remaining issue concerns the four single family dwellings which would be situated on Lot 3. I believe, based on the testimony and evidence discussed above, these qualify

as lawful nonconforming structures pursuant to B.C.Z.R. §§ 101.1 and 104. At the time the dwellings were constructed (prior to 1950) the subdivision regulations were more stringent than the zoning regulations and required a minimum lot size of 20,000 sq. ft. when the property is not served by public sanitary sewer. As Petitioners note, proposed Lot 3 would be 80,009 sq. ft., which would provide (at least theoretically) each of the four dwellings with a 20,000 sq. ft. “lot”.

If Petitioners obtain County approval for the resubdivision of Lot 1, the end result would be that Lots 1 and 2 would each contain one single family dwelling and would conform to current RC-5 zone requirements as to density and minimum lot size. Lot 3 would be nonconforming, since the 1.84 acre lot would be improved with four existing single family dwellings, while the current RC-5 regulations would permit only one dwelling on this lot.

THEREFORE, IT IS ORDERED this 24<sup>th</sup> day of **October, 2016** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 to permit (as concerns the B.C.Z.R.) a resubdivision of Lot 1 of Lands of Cora Porter with no additional development based on existing non-conforming residences constructed prior to 1945, be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioners must obtain development approval from Baltimore County to resubdivide Lot 1 shown on the site plan.
2. Petitioners must comply with the ZAC comments from DEPS, dated September 1, 2016; a copy of which is attached hereto and made a part hereof.

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

JEB:dlw

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Signed  
JOHN E. BEVERUNGEN  
Administrative Law Judge  
for Baltimore County