

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(925 Ellendale Drive)		
9 th Election District	*	OFFICE OF
3 rd Council District		
Envision Builders, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0100-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 Envision Builders, LLC, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R”) to authorize a building permit for an undersized lot in a DR 2 zone having a lot width of 92 ft. in lieu of the 100 ft. required.

Bill Hofherr and professional engineer John Motsco appeared in support of the petition. Jason Vettori, Esq. represented Petitioner. Several neighbors opposed the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. There were no substantive Zoning Advisory Committee (ZAC) comments received from any County agencies. A site plan was marked and admitted as Petitioner’s Exhibit 1.

According to the site plan the subject property is approximately 32,200 sq. ft. in size and split-zoned DR 1 and DR 2. The improvements proposed in this case would be situated entirely within the DR 2 zoned portion of the site. The property is unimproved and is known as Lot 48 on the plat of Glen Ellen, recorded in 1947. Petitioner proposes to construct a single-family dwelling on the lot, and made application to do so as required by B.C.Z.R. §304. A neighbor requested a hearing, which was held on November 13, 2017.

As discussed at the hearing, Petitioner has not requested a zoning variance. Instead, it seeks approval to construct a dwelling pursuant to the “undersized lot” provision in Section 304 of the Regulations. That section (entitled “Use of Undersized Single-Family Lots”) was designed to address the scenario in this case; i.e., where a lot of record, by virtue of a subsequent rezoning, becomes undersized or deficient, preventing the owner from erecting a house thereon. In *Mueller v. People’s Counsel*, 177 Md. App. 43 (2007), the court of special appeals described the two methods by which an owner may receive permission to construct a dwelling on an undersized lot: B.C.Z.R. §307 (concerning variances) which requires a showing of uniqueness and practical difficulty, and B.C.Z.R. §304, which does not. *Id.* at 87.

That regulation provides in pertinent part as follows:

§304.1. Types of dwellings allowed; conditions

Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
- B. All other requirements of the height and area regulations are complied with; and
- C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

I believe Petitioner has satisfied each of these elements. The lot was created in 1947 by a validly approved subdivision plat which was recorded among the Baltimore County land records. *See* Pet. Ex. No. 2 (Plat No. 2 “Glen Ellen”). Based on a review of the site plan it appears the yard setback requirements and height limitation of the DR 2 zone would be satisfied.

Counsel noted Petitioner owns the adjoining lot, which is improved with a single-family dwelling. That lot is approximately 100 ft. wide, which is the lot width requirement in the DR 2 zone. As such Petitioner could not “borrow” any land from Lot 47 to cure the lot width deficiency on Lot 48, and thus I find B.C.Z.R. §304.1.C is satisfied.

I understand the concerns raised by the adjoining neighbors, who have for many years enjoyed having this vacant lot next to their home. But I am not authorized to deny an undersized lot request on that basis. I am especially sympathetic to the plight of the neighbor residing on Autumn Leaf Road, which abuts the subject property to the rear. Mr. Lewis stated his property is frequently inundated with water flowing across the subject property and down to his lot. He presented photographs showing significant flooding conditions in his yard. *See* Protestant Ex. No. 1.

As discussed at the hearing, this problem was not created by the Petitioner or the prior owner of the lot, although it might well be exacerbated by the large retaining wall constructed on the neighbor's property. It would appear, and Mr. Motsco agreed, storm drains need to be installed in this area to convey the water to an appropriate outfall. Baltimore County has an obligation to provide storm drain facilities, and the site plan in fact shows the County has 10' and 20' wide "drainage and utility easements" adjoining these lots for just this purpose. *Eisenstein v. City of Annapolis*, 177 Md. 222, 226 (1939) ("[i]t is doubtless the burden of the municipality to construct and maintain drains or outlets of sufficient capacity to carry off all water").

THEREFORE, IT IS ORDERED this **16th** day of **November, 2017** by this Administrative Law Judge, that the Petition for Special Hearing to authorize a building permit for an undersized lot in a DR 2 zone having a lot width of 92 ft. in lieu of the 100 ft. required, be and is hereby GRANTED.

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.

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