

JB
6-15-18

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
(7531 Stream Crossing Road) *
3rd Election District * OFFICE OF
2nd Council District * ADMINISTRATIVE HEARINGS
Hal & Lori Kilberg, *et al.* *
Petitioners * FOR BALTIMORE COUNTY
* Case No. 2018-0283-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 Hal & Lori Kilberg and several other individuals, all of whom reside in the vicinity of the property at issue ("Petitioners"). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("BCZR") and seeks a determination of whether Lots 6, 7, 8, Parcel "A" and Drainage Reservations of the revised Plat of Old Court Gardens as recorded in Baltimore County Land Records on May 1, 1961 at WJR27, folio 77 can be processed and/or developed as individual lots or as a tract/resubdivision. A site plan was marked and admitted as Petitioners' Exhibit 1.

The Petitioners were represented by J. Carroll Holzer, Esq. Mostafa Izadi, a professional engineer, appeared on behalf of the individual owners of the above-referenced lots. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the county reviewing agencies.

This special hearing case concerns a residential development approved by the Planning Board in 1961. The Plat of Old Court Gardens was recorded in the land records at PB 27, page 77. The plat was submitted as an exhibit at the hearing, and most of the lots shown thereon have been

improved with single-family dwellings. But Lot Nos. 6, 7 & 8 are not accessible from Springbriar Lane (the cul-de-sac shown on the plat) and were never improved. Those lots are individually owned, and Mr. Izadi indicated he has been retained by the owners of Lot Nos. 6 & 7 to obtain permits for the construction of a dwelling on each of the lots.

Petitioners are concerned that constructing dwellings on these lots will caused increased water runoff onto their properties, and would also pose traffic safety issues regarding the access road proposed off of Green Spring Avenue. Petitioners contend there has been a lack of transparency concerning the potential development of these lots, and they seek a determination that improvement of these three lots would constitute a resubdivision of the 1961 plat, requiring that the owners undertake the development review process set forth in the Baltimore County Code ("BCC").

Questions frequently arise concerning the proper process and procedure to be used in evaluating development proposals for projects which were approved under prior regulatory schemes. The process for review and approval of residential developments in Baltimore County was quite different in 1961 than it is today. Unlike the current practice there was not a public hearing to consider a development proposal and a development plan for Old Court Gardens was never submitted or reviewed and approved by the County. In this case, the residential subdivision was approved by the Baltimore County Planning Board, as noted on the plat itself. Upon filing the plat in the County land records office, the developer was then able to secure permits for construction of dwellings on the building lots shown on that plat. Petitioners contend that since these lots have remained unimproved for over 50 years, the County should require a more formal and transparent review process wherein the owners are required to adhere to all current zoning and development regulations.

A special hearing is in essence a request for a declaratory judgment. *Antwerpen v. Balto. Co.*, 163 Md. App. 194, 209 (2005) (“A request for special hearing is, in legal effect, a request for a declaratory judgment”). Petitioners seek a determination (i.e., declaratory judgment) of whether the development of these lots should be considered a resubdivision or the processing of individual lots. As explained below, development of these lots would not constitute a minor subdivision or resubdivision of the 1961 plat.

The revised plat for Old Court Gardens was recorded in 1961 and the subject property (i.e., Lot Nos. 6, 7 & 8) is shown on that plat. As such, these lots were created lawfully and may be developed in accordance with the 1955 version of the BCZR. These lots are “in a recorded residential subdivision approved by the Baltimore County Planning Board.” BCZR §1B02.3.A.1. The standards applicable to the development of such lots are the “zoning regulations applicable to such use at the time the plan was approved by the Planning Board.” BCZR §1B02.3.B. The applicable regulations would therefore be the 1955 version of the BCZR.

In addition to the stormwater runoff issues—which Glenn Shaffer from the Department of Environmental Protection and Sustainability (DEPS) testified his agency is reviewing—the other significant issue raised by Petitioners concerns the means of access proposed for Lot Nos. 6 & 7. The 1961 Plat identifies a long and narrow parcel of land (i.e., “Parcel A for Access Road”) along the southern boundary of the development that would be used for this purpose. Since Lot Nos. 6 & 7 do not have “frontage [on] or access to the local or collector street” I believe they qualify as “panhandle lots” and the access road proposed would then be a “panhandle driveway.” BCZR §101.1.

The 1955 zoning regulations did not contain any reference to “panhandle” lots or driveways. Those terms were defined and added to the BCZR in 1989 by Bill 172-89. As such, at

least from a *zoning* perspective, the owner(s) of these lots would not need to comply with Section 102.4 of the current BCZR, which mandates compliance with BCC §32-4-409 concerning panhandle driveways and lots.

Even so, the County Code explicitly states the panhandle regulation (among others found in the same subtitle concerning "General Design Standards and Requirements") applies to "all development." BCC §32-4-401(b). Constructing a single-family dwelling on any one of these lots would constitute "development" as defined in Section 32-4-101(p)(1), and the owners would therefore need to comply with the "Panhandle Driveways" requirements found in Section 32-4-409 of the BCC.

Mr. Izadi submitted a report dated November 15, 2011 indicating that both Greenspring Avenue and the "Greenspring Service Road" are on the "Baltimore County Roads Inventory." In addition, the panhandle driveway access road would be 25' wide, which would also comply with B.C.C. §32-4-409. But based upon the evidence and documents presented at the hearing the owners of Lot Nos. 6 & 7 do not have a fee simple interest in the driveway, as required by the County Code.


Mr. Izadi presented documents whereby the developer of the original subdivision granted to Baltimore County a right-of-way easement through Parcel A, and that was presumably done in case the County would own and/or improve that road when it was ultimately constructed. Mr. Izadi indicated during the hearing he is discussing with the County's Real Estate bureau a potential land "swap" that would rectify this scenario, but no further information or evidence to that effect was submitted. In addition, there are other requirements set forth in this Code section which must be satisfied by the owner(s) of these lots.

THEREFORE, IT IS ORDERED this 26th day of June, 2018 by this Administrative Law

Judge, that Lot Nos. 6, 7, 8, Parcel "A" and Drainage Reservations shown on the revised Plat of Old Court Gardens as recorded in Baltimore County Land Records on May 1, 1961 at WJR27, folio 77 can be processed and/or developed as individual lots shown on a recorded plat, and not as a tract, resubdivision or minor subdivision.

IT IS FURTHER ORDERED that the present and/or future owners of Lot Nos. 6, 7, and 8 shown on the revised Plat of Old Court Gardens are required to comply with Section 32-4-409 of the Baltimore County Code concerning panhandle driveways.

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



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:slh