

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(3606 Southside Avenue)	*	OFFICE OF
10 th Election District		
3 rd Council District	*	ADMINISTRATIVE HEARINGS
Keith Barko		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Michael Knighton, Jr.		
<i>Contract Purchaser</i>	*	Case No. 2018-0368-SPHA
Petitioners		
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of Keith Barko, legal owner and Michael Knighton, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to permit the construction of a single-family detached dwelling in an RC 5 zone with a lot area of 1.079 acres in lieu of the minimum required area of 1.5 acres and to approve the removal of any and all “non-buildable” notes from previous DRC plans, so that the DRC can approve the current plan.

A petition for variance seeks to permit a proposed dwelling with side setbacks of 19 ft. and 22 ft. in lieu of the minimum required side setbacks of 50 ft. each. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Michael Knighton and surveyor Scott Dallas appeared in support of the requests. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. A substantive Zoning Advisory Committee (“ZAC”) comment was received from the Department of Planning (“DOP”). That agency opposed the zoning requests.

SPECIAL HEARING

This is an unusual case involving a tract of rural land in the Jacksonville area. The property is shown on a 1969 plat known as Groom Estates (PB33/folio 100) which (among other things) created a parcel known as “Lot 1.” That lot is improved with a single-family dwelling, 3610 Southside Avenue. The plat also contained three other “parcels,” two of which are improved with single-family dwellings (i.e., 3600 & 3602 Southside Avenue). It is unclear from the record when these homes were constructed, although the parcels on which they are located (as shown on the 1969 Groom Estate plat) were reconfigured through lot line adjustments granted by the DRC in 1995, 1997 and 2006. The subject property (identified as tax parcel 110) is approximately 1.07 acres in size and zoned RC 5. The property is unimproved and Petitioners seek zoning relief in order to construct a single-family dwelling on the parcel.

What makes this case so unusual is that the 1996 DRC plan and 2012 confirmatory deed to the subject property (Petitioners’ Ex. Nos. 2 & 8) both contain the following notation: “Parcel Not to be Buildable or Used to Support More Density.” No documents were submitted explaining why this note was added to the plan/deed and Mr. Dallas had no further explanation or information. One aspect of the special hearing request seeks to have this note removed from “previous DRC plans.”

It may be the owner in 1996 agreed to this “non-buildable” restriction as an inducement for the DRC to grant the limited exemption and approve the plan. While that is conjecture, it is certainly plausible. In any event, the restriction appears on the plan and deed which has been filed among the land records at Liber 31740, page 348. As such, under Maryland law this constitutes a “deed imposed restriction in the chain of title.” *Sea Watch Stores v. Council of Unit Owners*, 115 Md. App. 5, 20 (1997). A restriction/covenant of this nature “touches and concerns” the land, and

therefore runs with the land binding future grantors/grantees. *Mercantile-Safe Deposit and Trust Co. v. City of Baltimore*, 308 Md. 627 (1987). The undersigned does not have the statutory authority to strike such a condition from the plan and/or deed, and the petition must therefore be denied.

THEREFORE, IT IS ORDERED this 12th day of **September, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve the removal of any and all “non-buildable” notes from previous DRC plans, so that the DRC can approve the current plan, be and is hereby DENIED.

IT IS FURTHER ORDERED, in light of the above disposition, that the remaining special hearing and variance requests be and are hereby DISMISSED without prejudice.

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