

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(6307 Cedar Wood Road)		
1 st Election District	*	OFFICE OF
1 st Council District		
John A. Miller, <i>Legal Owner</i>	*	ADMINISTRATIVE HEARINGS
Benjamin S. Gary		
<i>Contract Purchaser</i>	*	FOR BALTIMORE COUNTY
Petitioners	*	Case No. 2019-0026-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 John A. Miller, legal owner and Benjamin S. Gary, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to Sections 102.4 & 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to approve a dwelling to be built on a lot 13,699 square feet in size in lieu of the required 20,000 square feet when the lot does not abut on a right-of-way at least 30 ft. wide over which the public has an easement of travel. A site plan was marked and admitted as Petitioners’ Exhibit 1.

John A. Miller and Benjamin S. Gary appeared in support of the petition. Two neighbors attended the hearing to express concern with certain aspects of the project. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”). Neither agency opposed the request.

The subject property is 13,699 square feet in size and zoned DR-5.5. The unimproved property is located in the Catonsville area and Mr. Miller explained the lot is part of a much larger tract owned by his father since 1937. Mr. Miller’s father (who died in 1959) constructed single-family dwellings and apartments in the area, although the subject property has never been

improved.

In the DR 5.5 zone, the minimum lot size is just 6,000 square feet. BCZR §1B02.3.C. The subject property is nearly three times that size and is also larger than many of the single-family dwelling lots in the community. Even so, the BCZR (Section 102.4) contains a unique provision which requires a 20,000 square foot lot when the proposed dwelling will not be accessed by a public street.

The proposed single-family dwelling (30' x 45') constructed on the subject property would be accessed via a 30 ft. right-of-way ("ROW") shown on the plan. Melissa Aldave testified she uses the ROW to access a detached garage at the rear of her home on Mt. Ridge Road and Mr. Wendling testified he uses the ROW to access his home and garage, which are located on Maiden Choice Lane. Mr. Wendling testified he "owns" the ROW in question, although he did not present any plats or deeds to substantiate that claim, and he disputed Petitioners' right to use the ROW to access the proposed dwelling.

From a conceptual standpoint, the proposed use of the ROW to access the new dwelling is reasonable and the driveway is certainly large enough to provide access to three (3) residential lots. Many dwellings in Baltimore County are accessed in a similar manner. The question is whether Petitioners have the right to use the ROW for access and installation of water and sewer house connections, a point disputed by the parties. As discussed at the hearing, zoning does not concern itself with title issues. Maryland's highest court has held that "reasonable zoning limitations are always directed to the property, itself, and its uses and structures, not to the completely separate matter of title to property, which is another whole field of law. In zoning, it is the property that is regulated, not the title." *Richard Roeser v. Anne Arundel County*, 368 Md. 294, 319 (2002). This issue must be resolved by Petitioners and the two neighbors who claim they own

or are entitled to use the driveway.

THEREFORE, IT IS ORDERED this 11th day of **October, 2018** by this Administrative Law Judge, that the Petition for Special Hearing to approve a dwelling to be built on a lot 13,699 square feet in size in lieu of the required 20,000 square feet when the lot does not abut on a right-of-way at least 30 ft. wide over which the public has an easement of travel, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Prior to issuance of a building permit for the proposed single-family dwelling Petitioners must demonstrate to the satisfaction of Baltimore County they have a legal means of access to the subject property as well as the right to install water and sewer lines to serve the dwelling.

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