

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(873 Ivy Hill Road)	*	OFFICE OF
8 th Election District		
2 nd Council District	*	ADMINISTRATIVE HEARINGS
George S. Nyquist, Jr.	*	FOR BALTIMORE COUNTY
<i>Legal Owner</i>		
Petitioner	*	Case No. 2019-0031-SPHA

* * * * *

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 George S. Nyquist, Jr., legal owner (“Petitioner”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to permit a proposed tennis court to be constructed in a riverine floodplain. A petition for variance seeks to permit a proposed tennis court to be located in the front yard in lieu of the required rear yard placement. A site plan was marked and accepted into evidence as Petitioner’s Exhibit 1.

George Nyquist, Jr. and Rick Richardson appeared in support of the requests. Two citizens attended the hearing to express concerns about flooding conditions in the area. 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”), the Department of Environmental Protection and Sustainability (“DEPS”) and the Department of Public Works (“DPW”). None of the reviewing agencies opposed the requests.

SPECIAL HEARING

Floodplain waiver requests are not “zoning” matters, although Baltimore County instructs owners to seek such waivers through the special hearing process under Section 500.7 of the

BCZR. I am apprehensive in reviewing these requests, which involve complex engineering principles and expertise. In addition, the myriad and byzantine flood plain regulations and codes under which such requests are to be analyzed are confusing and at times contradictory.

The Building Code states the general rule that “[n]o new buildings or additions shall be constructed in any riverine floodplain.” Building Code, Part 125.1. Petitioner is not seeking to construct a building or addition in the floodplain. The County Code utilizes different terminology and provides that the “County may not (with two exceptions not applicable here) permit **development** in a riverine floodplain.” BCC §32-4-414(c). It would seem this requires the petition to be denied, since “development” is a more comprehensive term than “buildings” and includes “any man-made change to improved or unimproved real estate including erection of buildings and other structures...grading, paving, clearing, excavation...” BCC § 32-8-101(g). But to further confuse matters the same regulations state that “all development in the floodplain area” requires a permit from the Building Engineer and shall be subject to other enumerated requirements. It seems impossible to reconcile these provisions.

The DPW submitted a ZAC comment indicating that agency did not oppose the flood plain waiver request. The Director of that agency indicated Mr. Richardson, a registered professional engineer, submitted a signed and sealed letter dated July 15, 2018 stating the project will have no impact upon the riverine flood plain. Mr. Richardson provided similar testimony at the hearing in this case.

Mike Stone, an adjoining neighbor, testified the area is subject to frequent flooding, and he indicated the private road and bridge used to access his and Petitioner’s home has been washed out by flood waters several times in recent years. As discussed at the hearing, I too am concerned about the potential for flooding in this area. But both the DPW and Mr. Richardson

have opined the tennis court will not have a negative impact upon the flood plain, and without any expert or technical testimony to the contrary I believe the request should be granted. I will incorporate in the final order below the ZAC comment submitted by the DPW to ensure that prior to issuance of any permits the necessary environmental and technical reviews are undertaken by State and local authorities.

VARIANCE

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The large property has irregular dimensions and significant topographical features. Indeed, based on a review of the site plan it appears the only available location for the tennis court (or any accessory structure for that matter) would be the front yard of the dwelling. As such the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be unable to construct the proposed tennis court. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare.

THEREFORE, IT IS ORDERED this 1st day of **October, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to Section 500.7 of the BCZR for a waiver under Part 125 of the Baltimore County Building Code and Article 32 of the Baltimore County Code to construct a proposed tennis court in a riverine floodplain, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a proposed tennis court to be located in the front yard in lieu of the required rear yard placement, 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 his 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.
2. Petitioner must comply with the DOP, DEPS and the DPW ZAC comments, copies of which are attached hereto and made a part hereof.

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