

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(3200 Timberfield Lane)		
3 rd Election District	*	OFFICE OF
2 nd Council District		
David & Esther Koshkarman	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2019-0264-SPH

* * * * *

OPINION AND ORDER

Petitioners herein, residing at 3200 Timberfield Lane have requested a Special Hearing relief pursuant to §500.7 of the Baltimore County Zoning Regulations (“BCZR”), regarding what they allege to be an improper and/or illegal waiver for an existing panhandle driveway, located inches from their residence. Property owners of 3200A Timberfield Lane (“Movants”) adjacent and serviced by the subject panhandle driveway, have filed a Motion to Dismiss aforesaid Special Hearing Petition. At the courts request, both parties have submitted briefs in support of their respective positions.

The Motion to Dismiss is based on two grounds. First, that the Administrative Law Judge (“ALJ”) does not have the authority to overturn the waiver granted as a result of the Design Review Committee (“DRC”) minor sub-division approved plan in 2016. The second ground is that an Addendum To The Contract of Sale (“Addendum”) between the Petitioners and Movants specifically calls for any dispute under the Contract of Sale to be referred for decision to the *Beis Din*, a Jewish Rabbinical Court.

My review of the memorandum of Counsel and documents submitted in the file establishes certain facts. First, the Petitioners were tenants at 3200 Timberfield Lane in 2016, when plans were first submitted to Baltimore County for approval of a minor- subdivision

consisting of 3200 and 3200A Timberfield Lane. The request was processed in the normal course and an exemption for the panhandle driveway was granted by the DRC. The location of that panhandle driveway passed within inches of 3200 Timberfield Lane. The minor-subdivision was approved and a number of easements were also granted, including a Water line and Driveway Easement, a 10 foot Drain and Utility Easement, a Storm Water Management Easement and a Forest Conservation Easement. The easements and the approved minor sub plan (14-024M, PAI # 03-0501, MIN-2016-00006-C) were all recorded in the land records of Baltimore County.

Subsequent to the granting of the minor sub-division (to which no appeal was taken at the time by the Petitioners) the Petitioners purchased 3200 Timberfield Lane. As part of that contract, an Addendum was agreed to and executed by David Koshkarman, which specifically identified the existence of the approved minor-subdivision as well as the recorded Easements. Further, the Addendum called for a credit of \$1,500.00 to be given the Petitioner at settlement in return for an agreement not to obstruct the minor-subdivision or easements granted. The Addendum includes the following:

Dispute Arbitration: The parties hereby waive trial by jury in any litigation arising out of the Contract as modified by this Addendum or any conflict created between the two documents. It is hereby agreed that any dispute that may arise in connection with the Contract, this Addendum, the Property, Easements, and/or Approved Subdivision shall be submitted before the Baltimore Beis Din. Judgment rendered by the aforesaid authority may be entered in any court having jurisdiction thereof.

Petitioner argues that § 500.7 of the BCZR allows a review by the ALJ of the waiver granted as a part of the 2016 DRC approval. He points particularly to a case known as *In re Castronovo, No. 03-C-15-6323* (Balt. Cir. Feb. 25, 2016) in which the court stated in reference to the BCZR, that “required compliance with procedures and provisions detailed in the (BCC).…”

that the “Board of Appeals must have the authority to review the cross-referenced sections of the BCC. . . Without such authority, the Board of Appeals would not be able to evaluate whether Respondent is in compliance with the requirements of (the BCZR)...” *Id.* At 5.

Petitioner maintains that this case is “materially similar” to the instant matter. However, I believe *Castronovo* in opposite. That case involved Critical Area Regulations, not a minor-subdivision approval. Indeed, the Circuit Court remanded *Castronovo* and determined that the ALJ had “authority” to review the cross-referenced section of the BCC” precisely because BCZR §§ 103.5 and 104.5 specifically addressed Critical Area Requirements. But the BCZR does not mention any provisions that reference requirements for a minor-subdivision approval. As Movant notes, the Office of Administrative Hearings (“OAH”) simply has no jurisdiction to review the propriety of a minor-subdivision approval.

In fact, Petitioners argument obscures an underlying procedural issue which requires this case to be dismissed. Specifically, Movant was granted an exemption by the DRC for a minor-subdivision on the subject property. This approval was a final action or “operative event” in accordance with a line of Maryland cases beginning with *Beth Tifiloh Congreg. v. Glyndon Community Ass’n*, 152 Md. App. 97 (2003) (DRC exemption is “operative event” which is immediately appealable). Here, the DRC granted an “exemption” from the development process for the “subdivision of land into three or fewer lots,” which include the complained of driveway easement and that approval was an operative event as discussed in *Beth Tifiloh*. Petitioners would have been permitted to appeal the DRC’s decision to the County Board of Appeals, but they did not. As such, they cannot now attempt to revisit the issue by way of BCZR § 500.7.

As to the agreement for Arbitration by a *Beis Din* as part of the contract Addendum for the purchase by the Petitioner of 3200 Timberfield Lane, Counsel for the Petitioners maintains

that since only Mr. Koshkarman signed the Addendum his wife Esther could still maintain an appeal or other action.

An Arbitration clause may be agreed to and included in a contract under the Maryland Uniform Arbitration Act. A “*Beis Din*” is a Jewish Rabbinical Court which has existed and evolved over the millennia to resolve disputes. In modern times a *Beis Din* can ad hoc be convened to address and finally resolve a particular dispute between two parties. It is an eminently fair process, as each side picks a Judge (usually a Rabbi) and the two Judges thereupon choose a third Judge. The use of *Beis Dins* are accepted and enforced by secular courts on a local basis in the same manner and degree as secular Binding Arbitration. As pointed out by Counsel for the Movant, the Maryland Court of Special Appeals in *Lang v. Levi*, 198 Md. App 154 (2011) refused to vacate *Av Beis Din* decision when part of a contract entered into by the parties to a contract, and finding that the parties were legally bound to the *Beis Din* decision.

Counsel for the Petitioner maintains that since Esther Koshkarman did not sign the Addendum, she is not bound to use the *Beis Din* as Binding Arbitration.

I disagree. The property is deeded to both Esther and David Koshkarman. They both executed the Owner Occupancy Affidavit (“OOA”). She is a co-tenant of 3200 Timberfield Lane and was so before the minor-subdivision was created. In addition, she was certainly aware of the construction of the panhandle driveway next to her home. A credit of \$1,500.00 to her benefit as co-owner at settlement was part of the Addendum agreement. Certainly, a title search prior to settlement of their purchase of 3200 Timberfield Lane revealed the existence of the various recorded easements, minor-subdivision specifics, including the subject driveway. I believe that for these reasons Esther Koshkarman had both constructive and actual knowledge of the Contract and Addendum which resulted in her ownership of 3200 Timberfield Lane.

In summary, the petitioner failed in 2016 to take an appeal to the Board of Appeals for the minor-subdivision, including the waiver granted for the placement of the subject driveway. They cannot now do so under §500.7 of the BCZR. Further, both David and Esther Koshkarman were aware of the Addendum and waived their right to take any actions contrary to the minor-subdivision other than by way of appeal to the Baltimore *Beis Din*.

THEREFORE, for all the above stated reasons, it is this 27th day of June, 2019, ORDERED that Movants Motion to Dismiss is hereby GRANTED; and

IT IS FURTHER ORDERED, that the Petition for Special Hearing in Case No. 2019-0264-SPH, be and is hereby DISMISSED

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

Signed
LAWRENCE M. STAHL
Administrative Law Judge
for Baltimore County

LMS:slh