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| IN RE: PETITIONS FOR SPECIAL HEARING | * | BEFORE THE |
| AND VARIANCE | | |
| (Lots 7 & 8 Island View Road) | * | OFFICE OF |
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| 15 th Election District | * | ADMINISTRATIVE HEARINGS |
| 7 th Council District | | |
| | * | FOR BALTIMORE COUNTY |
| Bruce & Melissa Laing, <i>Legal Owners</i> | | |
| Petitioners | * | Case No. 2019-0396-SPHA |
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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 Bruce & Melissa Laing, legal owners (“Petitioners”). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to allow the alteration of the minimum lot size requirement of a single lot record that does not meet the minimum acreage requirement in accordance with Section 1A4.3.B.1(b)(1) of the BCZR. In addition, a Petition for Variance was filed pursuant to BCZR as follows: (1) to allow a 10 foot side yard setback in lieu of the minimum 50 foot required pursuant to §1A4.3.B.2.b; (2) to allow a 39 foot setback from the centerline of the road in lieu of the minimum 75 foot required pursuant to § 1A4.3.B.2.b; (3) to allow a lot size of 0.508 acres (allowing for variations in area due to the location of mean high tide which defines the boundary line along the waters edge) in lieu of the minimum 1 ½ acre required pursuant to §1A4.3.B.1; and (4) to allow a structure hereafter erected the height of 50 feet in lieu of the maximum height of 35-feet pursuant to §1A4.3 . A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Bruce and Melissa Laing appeared in support of the requests. J. Neil Lanzi, Esq. represented Petitioners. There were no protestants in attendance. The next door neighbors, Gretchen Schnee

and Tim Cashen attended as interested citizens. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (“ZAC”) comments were received from The Bureau of Development Plans Review (“DPR”) and the Department of Environmental Protection and Sustainability (“DEPS”).

Petitioner, Bruce Laing testified that he and his wife Melissa own and run the Island View Inn, which is in the same waterfront community as the property in question. Mr. Laing’s parents ran the restaurant from 1968 until Bruce and Melissa bought them out in 1983 when they were newlyweds. Mr. Laing identified the restaurant, his current home, and the subject property (lots 7 and 8) on the Barrison Point and Island View Community drawing, which was accepted as Exhibit 2. Mr. Laing was shown an SDAT printout and Deed (combined Exhibit 3) and he confirmed that these documents described Lots 7 and 8, the property the Laings wish to build on. He testified that they had first started the process of building on the property soon after they purchased it in 1982. However, they were told by County officials that their their septic application could not be processed, and that a building permit could not be issued until public water and sewer were installed, which at the time the Laings were told would be another 5 to 7 years. Laing identified a letter from the County Department of Health dated January 24, 1983, which confirms this testimony and which was admitted as Exhibit 5. Mr. Laing also testified that public water and sewer were ultimately not installed until 23 years later, in 2006. This is also noted in the Letter Mr. Laing submitted as Exhibit 4.

Mr. Laing then identified and described a series of photos of the subject property and the neighboring properties. (Exhibit 6 A-D). Mr. Laing testified that he has discussed his building plans with his next door neighbors, Gretchen Schnee and Tim Cashen, and that they had no objections. The property owner, Ms. Schnee, was at the hearing and she confirmed that she knows

the Laings well and has no objections to their building plans or to their requested zoning relief. Finally, Mr. Laing explained that he and Melissa have been waiting all these years to build their retirement home on the property and that they wanted to do so now that they are close to retiring from running the restaurant. He acknowledged that he understood that if the special exception and variances were granted they would still have to conform to all aspects of the County's development and permitting process.

Kenneth Wells, a licensed property line surveyor was then called. Mr. Lanzi proffered Mr. Wells' credentials as an expert surveyor and land use and zoning consultant and I accepted him as such. Mr. Wells explained the site plan in more detail and specifically addressed the impacts of the Chesapeake Bay Critical Area and the 100 year floodplain. He explained that in drawing the Plan he used the larger 35 foot 100 year floodplain easement rather than the 20 foot CBCA easement when he calculated the center-line setback. He explained that by based the setback from the road on a 35 foot by 60 foot residence. This is how he calculated the 39 foot centerline setback and the 10 foot sideyard setbacks. He further explained the setback complications caused by the RC5 overlay in 2003 (which I note is three years before public water and sewer was installed in 2006). He explained that if the side yard setbacks were strictly enforced no structure at all would be permitted on the site. He also identified a 1926 record plat of the Barrison Point community which was accepted as Exhibit 7. By referencing this Exhibit he explained that the comment from Development Plans Review was in error, and that Lots 7 and 8 are, in fact, owned in fee simple by the Laings. This is also documented by the Deed (Exhibit 3).

With regard to the height variance requested in the petition, Wells explained that because it is a waterfront property the BCZR mandate that the structure be built on pilings which are a minimum of 7 feet and that the 35 foot height limit is measured from the ground, not the floor of

the home. As a result, the 7 foot piling height cuts into the 35 foot maximum structure height under the BCZR. He testified that it was unlikely that the structure will actually need to be 50 feet tall but that he was just being on the safe side in the request for variance relief. Mr. Wells also acknowledged that this was merely the first step in the process and that he understood that his final plans would need to conform in all respects to all County and State regulations.

On direct examination by Mr. Lanzi, Wells went through each of the factors in BCZR 502.1 and explained that this proposed project, with the requested special hearing and variance relief, will not conflict with any of the concerns in Sec. 502.1.

SPECIAL HEARING

Based on the testimony and evidence presented I find that the Petitioners have met their burden of establishing that they are entitled to special exception relief from the minimum lot size requirements. Virtually all the existing homes in the area are built on similar size lots and if the lot size requirement was strictly applied the Laings would be completely precluded from building on their property, a result that would be inequitable in my view. Especially since, as explained above, the County prevented the Laings from building back in 1983, when they first wanted to, prior to the subsequent zoning changes.

VARIANCE

As to the variance, it requires 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).

As explained by Mr. Wells, the lots in question have a natural contoured shoreline, unlike many of the surrounding properties, which have bulkheads. The property also lies in the Chesapeake Bay Critical Area and in a 100 year floodplain. As such, the property is unique. If the Regulations were strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to build any structure on the property. 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. This is demonstrated by the absence of County and/or community opposition. Finally, the evidence establishes that none of the hardships in this case were created by the Laings, and this militates in favor of granting the variance relief. *See, Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588, 620-26 (2014).

THEREFORE, IT IS ORDERED this **18th** day of **October, 2019**, by this Administrative Law Judge, that the Petition for Special Hearing to allow the alteration of the minimum lot size requirement of a single lot record that does not meet the minimum acreage requirement in accordance with Section 1A4.3.B.1(b)(1) of the BCZR, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) to allow a 10 foot side yard setback in lieu of the minimum 50 foot required pursuant to §1A4.3.B.2.b; (2) to allow a 39 foot setback from the centerline of the road in lieu of the minimum 75 foot required pursuant to § 1A4.3.B.2.b; (3) to allow a lot size of 0.508 acres (allowing for variations in area due to the location of mean high tide which defines the boundary line along the waters edge) in lieu of the minimum 1 ½ acre required pursuant to §1A4.3.B.1; and (4) to allow a structure hereafter erected the height of 50 feet in lieu of the maximum height of 35-feet pursuant to §1A4.3, 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 permits Petitioners must comply with the ZAC comments submitted by DEPS, and DOP, copies of which are attached hereto and made a part hereof, and Petitioners will also comply with the RC5 performance standards as listed in Section 1A04.4 of the BCZR.

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

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:slh