

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(8228 Belair Road)		
14 th Election District	*	OFFICE OF
5 th Council District		
Mark J. McQuade	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
BSS White Marsch, LLC	*	FOR BALTIMORE COUNTY
<i>Contract Purchaser</i>		
	*	Case No. 2019-0526-SPH
Petitioners		
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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 Mark J. McQuade, legal owner and BSS White Marsh, LLC, contract purchaser (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) for approval of a waiver pursuant to § 32-4-107(b) of the Baltimore County Code (“BCC”) and/or § 500.7 of the BCZR to waive the requirements of § 32-4-414 of the BCC and Part 125 of the Baltimore County Building Code (Baltimore County Council Bill 40-15) to permit development within a riverine floodplain, as described herein. A site plan was marked and admitted as Petitioners’ Exhibit 1.

Johnny Sweeny, an agent of the Contract Purchaser, BSS White Marsh, LLC appeared in support of the petition. Adam D. Baker, Esq. represented Petitioner. Also in attendance was Nicholas Leffner of Kimley Horn, the engineer who prepared and sealed the site plan. His *curriculum vitae* was admitted as Petitioner’s Exhibit 2. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Environmental Protection and Sustainability (“DEPS”), the Department of Public Works (“DPW”), and the State Highway Administration (“SHA”). Subject to these comments none of

these agencies opposed the requested relief.

SPECIAL HEARING

Counsel for the Petitioner filed a detailed Supplement to the Floodplain Waiver request which explains the existing conditions and structures on the site, as well as a description of the proposed project – a 150,000 square foot self-storage facility. That Supplement is hereby expressly incorporated into this Opinion and Order.

Because there were no protestants present at the Hearing counsel for the Petitioner, Adam Baker, was allowed to present the case by way of a proffer of the evidence. He explained that the surrounding area consists of a mix of similar commercial uses and structures. This site presents a number of design issues because it is adjacent to White Marsh Run and partially within the Baltimore County (but not the FEMA) floodplain. Mr Baker explained that a Steep Slopes and Erodible Soils Analysis (SSESA) was prepared and approved by DEPS on January 28, 2019. A forest conservation variance was also approved on August 27, 2019 (tracking number 05-19-2997). Further, a forest and stream buffer exists on the northwestern portion of the Property and, therefore, a Forest Buffer Determination was prepared and also approved on January 28, 2019.

As Mr. Baker explains in the Supplement to the Waiver Request:

“Given the various constraints, as described herein and as shown on the accompanying Site Plan, development of the Property is limited in all directions. The only viable option to carry out the proposed development is to build out the rear of the Property towards White Marsh Run. The impacts to these identified sensitive areas has been minimized and mitigated by the following design elements: (1) locating the building as close to Belair Road as possible, (2) building vertically (multiple stories and basement) as opposed to horizontally, and (3) adding a retaining wall along the majority of the site improvements. Variances for impacts to the northwest have been approved by the appropriate agencies as noted herein.

Per the Floodplain Study (pending Baltimore County approval) for Whitemarsh Run, the proposed building will not be in the Ultimate Developed Floodplain and will adhere to the Baltimore County Design Manual Plates DF-1 and DF-2 for building setbacks from the Floodplain Elevation and Freeboard from the 100-year water surface elevation. The building has been raised out of the floodplain through the implementation of a retaining wall and the proposed

site grading. Existing structures within the Ultimate Developed Floodplain are to be removed from the floodplain with the proposed development, improving the overall safety of the site during such storm events. Additionally, the building setback requirements of the front, rear, and side yards are satisfied per Baltimore County Code Section 238 *B.R. Zone Area Regulations*. The use and development of the Property for the proposed Beyond Self-Storage facility meet all of the applicable sections of the Baltimore County Zoning Regulations as well as the Baltimore County Landscape Manual. The proposed use of the Property is consistent with the surrounding land uses along Belair Road, which is comprised of a blend of commercial developments. The construction of the project would help promote Baltimore County's growth as a major corporate economic development area."

I find this reasoning sound and convincing. I specifically questioned Mr. Baker and Mr. Leffner, the engineer, about the Floodplain Study and they acknowledged that it is still under County review. They further explained that if the County does not ultimately approve the study then this proposed development cannot be built. As the Supplement explains in some detail:

"The Ultimate Developed Floodplain is more restrictive than the floodplain identified within the current Federal Emergency Management Agency ("FEMA") Flood Insurance Rate Map ("FIRM") and has a greater impact to the Property than the floodplain established under the FEMA FIRM. Although a small portion of the proposed development (grading and part of the proposed retaining wall) will be located within the Ultimate Developed Floodplain, the proposed development will improve the existing conditions on the Property. Among other things, the development will add stormwater management where there is none now, remove structures which are currently located within the floodplain, and it will increase the amount of trees and forested buffer from what exists on the Property now. In light of the foregoing, there is good and sufficient cause to approve the waiver request."

The Supplement then addresses all the factors required by BCC Sec. 32-8-303 in order to grant a floodplain waiver request. In conclusion the Petitioner urges that:

"The existing site constraints not only create exceptional hardships for the proposed development of the Property, but likely for *any* development of the Property. The requested waiver relief is the minimum relief necessary and will not pose a threat to the health, safety and welfare of the general public. If granted, the waiver relief will allow the site to be developed in a manner that is consistent with the applicable state and local laws and regulations and in a way that is beneficial to the surrounding properties on account of the improvements that are integral to the development (e.g. stormwater management, removing existing structures for the floodplain, and adding trees and other vegetation to the site)."

Again, I find that Petitioner has met its burden of establishing entitlement to the floodplain waiver. I also note that the Director of DPW has submitted a Memorandum to the

Director of PAI dated January 6, 2020 in which he references the Petitioner’s Floodplain Study and concludes that “[t]he Department of Public Works takes no exception to the approval of the waiver request.”

THEREFORE, IT IS ORDERED this **14th** day of **January, 2020** by this Administrative Law Judge, that the Petition for Special Hearing for approval of a waiver pursuant to § 32-4-107(b) of the Baltimore County Code (“BCC”) and/or § 500.7 of the BCZR to waive the requirements of § 32-4-414 of the BCC and Part 125 of the Baltimore County Building Code (Baltimore County Council Bill 40-15 to permit development within a riverine floodplain, as described herein, 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. Petitioners must comply with ZAC comments submitted by DEPS and SHA, copies of which are attached hereto and made a part hereof.
3. This waiver request is conditioned upon the County’s final approval of Petitioner’s Floodplain Study (Petitioner’s Exhibit 3).

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

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

PMM:slh