

IN THE MATTER OF
PAUL GODWIN – Legal Owner
CHARLES AND INGRID CASTRONOVO –
Petitioners

RE: Petition for Special Hearing for the
Property Located at 1452 Shore Road

15th Election District
6th Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 15-055-SPH
*

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OPINION

This matter comes to the Board of Appeals on appeal by Charles Castronovo and Ingrid Castronovo (the “Petitioners” or “Castronovos”) of the Order on Remand issued by John E. Beverungen, Administrative Law Judge for Baltimore County (the “ALJ”), dated February 24, 2017 granting in part and denying in part a Petition for Special Hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“BCZR”) in connection with the property owned by Paul Godwin (the “Respondent” or “Godwin”) located at 1452 Shore Road, Baltimore, Maryland 21220 (the “Godwin Property”).

In the proceedings before the Board, Lawrence E. Schmidt, Esquire, Christopher W. Corey, Esquire, and Smith, Gildea & Schmidt, LLC represented the Petitioners and Edward C. Covahey, Jr., Esquire, Bruce Edward Covahey, Esquire, and Covahey & Boozer, P.A. represented the Respondent.

A hearing was held before the Board on July 13, 2017, and the Board conducted a public deliberation on October 17, 2017.

PROCEDURAL HISTORY

The Castronovos own the waterfront property located at 1501 Shore Road, Baltimore, Maryland 21220 in the Middle River community of Baltimore County. Godwin owns the waterfront property that adjoins the Castronovos' parcel to the northwest. The disputes at issue before the Board stem from the enlargement of the house on the Godwin Property in 2006 and the construction of a two-story deck on the waterside of the Godwin Property in 2014-15.

The Castronovos initially filed a Petition for Special Hearing in 2014 before the Office of Administrative Hearings for Baltimore County, seeking a determination that the Godwin Property was in violation of Baltimore County Code ("BCC") Section 33-2-603 and the BCZR because (a) the dwelling and other improvements illegally exceeded the permitted lot coverage following a substantial renovation and expansion of Godwin's house in 2006 and (b) the construction of a two-level deck in 2014-15 further exacerbated the limitations on lot coverage and was otherwise illegal under applicable regulations. Following a hearing, the ALJ issued an Order dated November 6, 2014 dismissing the Castronovos' Petition for Special Hearing. The ALJ ruled that he did not have jurisdiction to grant a Petition for Special Hearing under Section 500.7 of the BCZR that would require an interpretation of the BCC. On appeal by the Castronovos, this Board also granted Godwin's motion to dismiss following a *de novo* hearing. By Order dated June 5, 2015, the Board, like the ALJ, concluded that it lacked jurisdiction to provide special hearing relief in connection with the interpretation of the BCC. On further appeal to the Circuit Court for Baltimore County, the Honorable Judith C. Ensor issued a Memorandum Opinion and Order dated February 25, 2016 holding that the Board's dismissal of the Castronovos' Petition for Special Hearing was "incorrect as a matter of law" and this case was remanded to the Board "for further proceedings."

Following remand from the Circuit Court, the Board issued an Order of Remand dated October 28, 2016 to the Office of Administrative Hearings for Baltimore County. The ALJ held a second hearing of this matter on January 12, 2017 which was followed by an Order dated February 24, 2017. The ALJ's Order granted the Castronovos' Petition for Special Hearing with respect to their contention that Godwin was in violation of the permitted lot coverage limitations imposed by BCC Section 33-2-603 due to the improvements to the Godwin dwelling in 2006 but denied the Castronovos' requests for special hearing relief with respect to the construction of the new deck in 2014-15. Not satisfied with the ALJ's decision, the Castronovos seek *de novo* review of the issues raised in their Petition for Special Hearing before the Board.

BACKGROUND

The Godwin Property is 22,244 square feet in area – just over a half acre – and is zoned D.R. 5.5. According to the evidence presented to the Board, the Godwin Property is improved with a dwelling, a porch, a detached garage, a shed, a brick walkway and steps, and a driveway. The parties agree that the Godwin Property is located within the Chesapeake Bay Critical Area pursuant to Section 8-1801, *et seq.* of the Natural Resources Article of the Annotated Code of Maryland. As such, the Godwin Property is subject to limitations that dictate the maximum amount of permitted lot coverage under the Maryland Code and the Baltimore County Code. *See* Md. Code Ann., Nat. Res. § 8-1808(a) (“It is the intent of this subtitle that each local jurisdiction shall have primary responsibility for developing and implementing a [critical area protection] program, subject to review and approval by the [Critical Area] Commission [for the Chesapeake and the Atlantic Coastal Bays].”); BCC § 33-2-603(b)(3)(iii)(2)(B) (limiting lot coverage for parcels greater than one-half acre and less than one acre existing on or prior to December 1, 1985 to the greater of 5,445 square feet or 15% of the lot area).

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Because (a) the Godwin Property existed as a subdivided parcel as of December 1, 1985 and (b) is 22,244 square feet in size, the BCC generally would limit lot coverage within the Chesapeake Bay Critical Area to 5,445 square feet. Under the BCZR, however, any parcel with lot coverage within the Chesapeake Bay Critical Area exceeding the limitations established by the Baltimore County Code is grandfathered based on the use in existence on June 13, 1988. *See* BCZR § 103.5(C) (“The county shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on June 13, 1988.”).

“Lot coverage is defined in Section 8-1802 of the Natural Resources Article of the Annotated Code of Maryland as follows:

(17)(i) “Lot coverage” means the percentage of a total lot or parcel that is:

1. Occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or
2. Covered with gravel, stone, shell, impermeable decking, a paver, permeable pavement, or any manmade material.

(ii) “Lot coverage” includes the ground area covered or occupied by a stairway or impermeable deck.

(iii) “Lot coverage” does not include:

....

4. A deck with gaps to allow water to pass freely.

Md. Code Ann., Nat Res. § 8-1802(a)(17). Ken Wells, a registered surveyor, testified on behalf of the Castronovos and presented to the Board his calculations of lot coverage on the Godwin Property at specified points in time, referred to as “mile posts:” (a) in 1988, when Baltimore County enacted its Chesapeake Bay Critical Area regulations, (b) in 2006, at the time that Godwin expanded the dwelling on his property, and (c) in 2014, when Godwin added a deck to his property.

Comparing a 1982 Location Survey of the Godwin Property that he brought to scale with the assistance of CAD software, and using control points that he obtained through field

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measurements, Mr. Wells testified that the lot coverage for the Godwin Property as of 1988 was 5,478 square feet. Mr. Wells further corroborated his calculations using a 2005 GIS aerial image of the Godwin Property. The parties agree that the lot coverage represented on the 1982 Location Survey and in the 2005 GIS aerial photograph remained unchanged from 1988 until the expansion of the Godwin dwelling in 2006. Although BCC Section 33-2-603(b)(3)(iii)(2)(B) otherwise limited lot coverage to 5,445 square feet, BCZR Section 103.5(C) permitted the grandfathered lot coverage on the Godwin Property that existed as of June 13, 1988 – 5,478 square feet.

According to Mr. Wells' calculations, in 2006, following an expansion of the Godwin dwelling, the lot coverage on the Godwin Property increased to 6,397 square feet. Thomas Panzarella, a representative of the Baltimore County Department of Environmental Protection and Sustainability ("DEPS"), testified at the hearing before the Board that lot coverage following the 2006 improvements to the Godwin Property totaled 6,001 square feet. The parties agree that the difference between the calculations of Mr. Wells and Mr. Panzarella stems primarily from Mr. Wells' inclusion of the overhang of the roof of the Godwin dwelling in his determination of lot coverage, a component that Mr. Panzarella did not include in his calculations. Notwithstanding the limitations on lot coverage imposed by the Chesapeake Bay Critical Area Regulations eight years earlier, the County issued a building permit to allow for the increase in lot coverage on the Godwin Property in 2006 – by 919 square feet according to Mr. Wells. Neither of the parties nor Mr. Panzarella could offer an explanation as to reason for the County's issuance of a building permit to allow the 2006 renovations of the Godwin Property when it is clear that the lot coverage resulting from those improvements increased beyond the grandfathered limit under BCZR Section 103.5(C).

In 2014-15, Godwin constructed a deck on the water side of his dwelling, comprised of a lower deck, an upper deck, stairs, a landing, and footers. Relying on an email dated July 21, 2014 from Kate Charbonneau, the Regional Program Chief for the Maryland Critical Area Commission, the Castronovos argue that the overlap area of the upper deck and the lower deck and the area covered by stairs and a landing between the upper deck and lower deck constitute lot coverage. Based on Ms. Charbonneau's email, Mr. Wells calculated that Godwin had illegally increased the lot coverage on his property by an additional 326 square feet based on the area of the upper deck (which overlaps with the lower deck), the stairs and landing included as part of the deck, and the deck footers.

Godwin testified at the hearing about, among other things, the materials used in the construction of his deck. He produced photographs and a sample of the composite decking material used for the upper deck, the lower deck, and the stairs and landing connecting the two deck levels. The evidence demonstrates that the decking material used by Godwin contains a ¼ inch space between the boards that allows for water to pass freely through. According to Mr. Panzarella, Regina Esslinger, a DEPS supervisor, declined to include any portion of the deck structure constructed in 2014-15 as lot coverage because all of the deck material used by Godwin allows for water to pass freely through.

DECISION

The Petition for Special Hearing seeks a determination regarding four issues:

1. Whether the Godwin Property is currently in violation of lot coverage limitations imposed by BCC Section 33-2-603;
2. Whether the construction of a stairway and two-level deck on the Godwin Property increases the lot coverage for the property in violation of BCC Section 33-2-603;

3. Whether the construction of a stairway and two-level deck on the Godwin Property violates BCZR Section 102.1; and
4. Whether the construction of a stairway and two-level deck on the Godwin Property violates the limitation on extending non-conforming structures and uses no more than 25% of the ground floor area of the existing building.

A. The Godwin Property Currently is in Violation of Lot Coverage Limitations Imposed by BCC § 33-2-603

Based on the evidence presented at the hearing, it is clear that the 2006 improvements to the Godwin Property violated the lot coverage limitations included in the Chesapeake Bay Critical Area regulations. Because the Godwin Property is 22,244 square feet in size (slightly more than a half acre), the total lot coverage permitted under BCC Section 33-2-603(b)(3)(iii)(2)(B) without grandfathering is 5,445 square feet. Pursuant to COMAR 27.01.02.07.B, local jurisdictions are authorized to “establish grandfather provisions as part of their local Critical Area programs.” Under the grandfathering provisions of the BCZR, Baltimore County permits “the continuation, but not necessarily the intensification or expansion,” of lot coverage in existence on June 13, 1988. *See* BCZR § 103.5.

For grandfathered parcels that exceed the lot coverage limitations established by BCC Section 33-2-603, any “intensification or expansion” of lot coverage “may be permitted only in accordance with [BCZR] Section 104.5 . . . and with the variance provisions and procedures outlined in § 32-4-231, § 33-2-205, or § 33-2-603 of the Baltimore County Code, whichever is or are applicable.” BCZR § 103.5; *see also* BCZR § 104.5 (“Any use which becomes or continues to be nonconforming which exists within the Chesapeake Bay Critical Area on or after the effective date of this section is subject to the provisions of Sections 104.1, 104.2 and 104.3 and to the variance provisions and procedures of . . . § 33-2-603 of the Baltimore County Code, whichever

is or are applicable.”). Any expansion of grandfathered lot coverage exceeding the limitations mandated by BCC Section 33-2-603(b)(3)(iii)(2)(B) thus requires a variance from DEPS under BCC Section 33-2-603(b)(3)(v).

In the case before the Board, the grandfathered lot coverage for the Godwin Property totaled 5,478 square feet – the lot coverage in existence on June 13, 1988. When Godwin renovated and expanded his property in 2006, the lot coverage increased to 6,397 square feet based on Mr. Wells’ calculations and 6,001 square feet per Mr. Panzarella. According to both of the experts that testified at the hearing, the Godwin Property thus illegally exceeded the permissible lot coverage following the 2006 expansion of the Godwin dwelling. Contrary to the requirements of BCZR §§ 103.5 and 104.5 and BCC Section 33-2-603(b)(3)(v), Godwin never obtained a variance in connection with the expansion of his nonconforming lot coverage in 2006.¹ Based on the foregoing undisputed facts, the Board is compelled to grant the Castronovos’ petition for special hearing to the extent that the Godwin Property is in violation of the lot coverage limitations imposed by BCC Section 33-2-603 based on the 2006 renovations thereto.

B. The Construction of a Deck in 2014 Did Not Increase Lot Coverage on the Godwin Property in Violation of BCC Section 33-2-603

The Board concludes that the 2014-15 construction of a stairway and two-level deck on the Godwin Property did not violate the lot coverage limitations included in the Chesapeake Bay Critical Area regulations for two independently sufficient reasons. First, the Board notes that Section 8-1802(a)(17)(iii)(4) of the Natural Resources Article of the Annotated Code of Maryland specifically excludes from the definition of “lot coverage” “[a] deck with gaps to allow water to

¹ It is possible that Godwin did not realize that a variance was required in connection with his increase of lot coverage in 2006 as the County granted his request for a building permit to expand his dwelling without a variance.

pass freely.” Based on the photographs of the constructed deck and the sample of the decking material used by Godwin, it is clear that his deck contains ¼ inch gaps in the boards that allow for the free passage of water. In other words, the deck erected by Godwin is not “impermeable” such that the Board would be compelled to conclude that it constitutes “lot coverage” under Section 8-1802(a)(17)(ii) of the Natural Resources Article. Accordingly, the construction of the deck and stairway on the Godwin Property in 2014-15 did not violate the lot coverage limitations included in BCC Section 33-2-603.

Second, DEPS is the County agency charged with administering Chesapeake Bay Critical Area program, and DEPS made a specific determination in its consideration of Godwin’s application for a building permit that the deck does not constitute “lot coverage” under the Chesapeake Bay Critical Area regulations. The Court of Appeals has made clear that “[a] degree of deference should often be accorded the position of the administrative agency charged with interpreting and enforcing a particular set of statutes or regulations.” *HNS Dev., LLC v. People’s Counsel for Baltimore County*, 425 Md. 436, 449 (2012). Deference to DEPS in the instant case is particularly appropriate given its mandate to make determinations regarding lot coverage and variances relating thereto under BCC Section 33-2-603. For the foregoing reasons, the Board denies the Castronovos’ request for special hearing relief in connection with their contention that the Godwin’s construction of a stairway and two-level deck on the water side of his house violates that lot coverage limitations of BCC Section 33-2-603.

C. The Construction of a Deck in 2014 Did Not Violate BCZR Section 102.1

The Castronovos assert that the approval of Godwin’s deck violates BCZR Section 102.1. BCZR Section 102.1 provides that “[n]o land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall

include any extension of a lawful nonconforming use.” Because the construction of the two-level deck and stairway on the Godwin Property does not constitute an increase in lot coverage, the new deck and stairway likewise are not an extension of a nonconforming use in violation of BCZR Section 102.1. The Board thus denies the Castronovos’ request for a special hearing to determine that the Godwin’s construction of a two-level deck and stairway violated BCZR Section 102.1.

The Board further notes that the Castronovos’ reliance on alleged violations of the Baltimore County Modified Buffer Area Plan as an additional basis for Godwin’s violation of BCZR Section 102.1 also is misplaced. BCZR Section 102.1 clearly applies to violations of “these regulations” – meaning the BCZR. The Baltimore County Modified Buffer Area Plan is not part of the BCZR. Moreover, the Castronovos have not sought in this case special hearing relief in connection with Godwin’s asserted violations of the Modified Buffer Area Plan.

D. The Construction of a Deck in 2014-15 Did Not Violate the Limitation in BCZR Section 104.3 on Extending Nonconforming Structures and Uses No More Than 25% of the Ground Floor Area of the Existing Building

BCZR Section 103.5(C) restricts the intensification or expansion of a grandfathered use of property that does not conform to the strictures of the Chesapeake Bay Critical Area program. The intensification or expansion of such a nonconforming use within the Chesapeake Bay Critical Area may only be permitted in accordance with BCZR Section 104.5, which, in turn, mandates compliance with BCZR Section 104.3.

Under BCZR Section 104.3, “[n]o nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25% of the ground floor area of the building so used.” The Board has concluded that Godwin’s construction of a two-story deck and stairs in 2014-15 does not constitute an illegal expansion of lot coverage and, therefore, is not an extension of a nonconforming use within the ambit of the

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Chesapeake Bay Critical Area program that would implicate BCZR Sections 103.5(C), 104.3, and 104.5. Accordingly, the Board denies the Castronovos request for special hearing relief in connection with their claim that Godwin's two-level deck and stairs violates the limitation on extending nonconforming structures and uses no more than 25% of the ground floor area of the existing building.

ORDER

WHEREFORE, it is this 14th day of June, 2018, by the Board of Appeals of Baltimore County,

ORDERED, that the Petition for Special Hearing to determine that the Godwin Property is currently in violation of the lot coverage limitations imposed by Section 33-2-603 of the BCC be and hereby is **GRANTED**.

IT IS FURTHER ORDERED, that the Petition for Special Hearing to determine that the construction of a stairway and two level deck on the Godwin Property increases the amount of lot coverage maintained on the property in violation of Section 33-2-603 of the BCC be and hereby is **DENIED**.

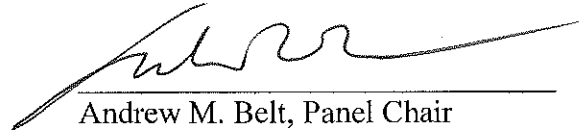
IT IS FURTHER ORDERED, that the Petition for Special Hearing to determine that the construction of a stairway and two level deck on the Godwin Property violates Section 102.1 of the BCZR be and hereby is **DENIED**.

IT IS FURTHER ORDERED, that the Petition for Special Hearing to determine that the construction of a stairway and two level deck on the Godwin Property violates that limitation on extending nonconforming structures and uses no more than 25% of the ground floor area of the existing building be and hereby is **DENIED**.

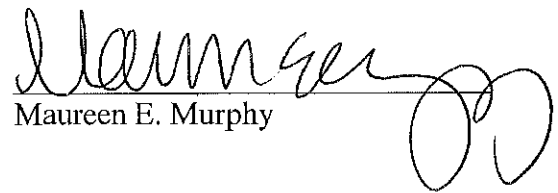
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Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew M. Belt, Panel Chair



Maureen E. Murphy

James H. West was a Board member and participated in the hearing and public deliberation in this matter. His term expired on April 30, 2018.



Board of Appeals of Baltimore County

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June 14, 2018

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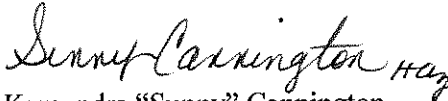
RE: *In the Matter of: Paul Godwin – Legal Owner*
Charles and Ingrid Castronovo – Petitioners
Case No.: 15-055-SPH

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,


Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: Paul Godwin
Charles and Ingrid Castronovo
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
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