

IN RE:
KATRINA GREWE
WILMINGTON GREWE
TOBY A. GREWE
5 MISSI COURT
4TH ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 17-114-SPH

* * * * *

OPINION

This case comes to the Board on appeal of the Administrative Law Judge’s Opinion and Order dated December 30, 2016, denying Petitioners request, pursuant to Baltimore County Zoning Regulation (“BCZR”) §500.7, for approval of: (1) the third amendment of the Final Development Plan for “Worthington Valley Estates Addition” for the: (a) subdivision of the Storm Water Management Reservation; (b) creation of Lot 34; and (c) to increase the total lots from 33 to 34; (2) any other permission deemed necessary by the Administrative Law Judge; and (3) amend the tract boundary for the property of “Worthington Valley Estates Additions.”

A public hearing was held, *de novo*, before this Board on June 1, 2017. Petitioners, joined by David and Carmenza Heimbach, appeared *pro se*. Protestant Gary Eidelman was represented by Gregory Rapisarda. A Public Deliberation, originally scheduled for August 8, 2017, was ultimately held on October 3, 2017.

Background

Worthington Valley Estates Addition was created by plat recorded in 1981 and is zoned R.C. 5. There are 33 lots within Worthington Valley Estates Addition, with a four acre stormwater management parcel, intended to be conveyed, but not actually conveyed, to the County. Petitioners’ predecessor in interest (Bill Grewe, and his wife, Carmenza) purchased the stormwater

management parcel in 2006. Petitioners seek to combine one acre of the stormwater management parcel with a contiguous parcel outside of the Worthington Valley Estates subdivision in order to create Lot 34 for a single-family dwelling to be within Worthington Valley Estates. The remaining 3+ acres of the stormwater management parcel would then be conveyed to the County as intended.

Petitioners started on this project in 2006 and received tentative approval from the Development Review Committee to proceed in 2008. In 2009, Bill Grewe encountered health issues and passed away. The project lingered until 2013. Petitioners then undertook the work and environmental studies necessary, spending significant amounts of money. In September 2015, the First Minor Subdivision Plan was submitted to the County. In December 2015, James Markle, manager of Stormwater Management of Baltimore County Department of Environmental Protection and Sustainability (“DEPS”), informed Mr. Heimbach that the County agreed to take over maintenance of the stormwater management pond, which was to be conveyed in fee to the County, along with other conditions. Unfortunately, a car accident in January 2016 derailed the project once again. Later that year, Petitioners pushed the project forward, resulting in the hearing below.

Mr. Eidelman, along with his wife Jill, owns and resides at the property located at 3 Missi Court. Mr. Eidelman purchased the property in June 2002. He testified that he did his due diligence when researching the property. He particularly liked that the property he ultimately purchased was part of a wooded area and was set aside for stormwater management, understanding that it would not be developed, and moreover, would be transferred to the County. Mr. Eidelman concluded that the adjacent parcel’s reservation for stormwater management would enhance the value of the property he purchased. He would not have purchased his property if the adjacent parcel could be developed. In short, Mr. Eidelman testified he relied on the development plan when he and his

wife made their decision to purchase the property. Mr. Eidelman also testified when there is heavy rain, water moves past his property into the stormwater management pond. Mr. Eidelman raised concerns about the stormwater management area if a portion of the existing stormwater management area is developed.

No expert witnesses were presented by either party at the hearing in front of the Board.

Final Development Plan Regulations

A final development plan serves a notice function to prospective buyers and acts as a shield for those who have made a decision to purchase property located within the final development plan from certain changes. Regulations concerning development plans, as is relevant, are found in BCZR §1B01.3. As set forth in BCZR §1B01.3(A)(1), the regulations are intended:

- a. To provide for the disclosure of development plans to prospective residents and to protect those who have made decisions based on such plans from inappropriate changes therein; and
- b. To provide for review of residential development plans to determine whether they comply with these regulations and with standards and policies adopted pursuant to the authority of Section 504.”

Amendments to a previously approved final development plan are governed by BCZR §1B01.3(A)(7), which states that such a plan may only be amended as follows (as is relevant, as the amendment sought occurs after nearby property, the Eidelmans’, has been sold):

b. Amendment after sale of interest in nearby property or upon demand for hearing. In the case of an amendment not allowed under Subparagraph a, by reason of sale of property within the area, or in case of a demand for hearing by an eligible individual or group, the plans may be amended through special exception procedures, in the manner provided under Section 502 and subject to the following provisions:

- (1) The amendment must be in accord with the provisions of the Comprehensive Manual of Development Policies and with the specific standards and requirements of this article, as determined by the Department of Planning. The Director, on behalf of the Planning Board, shall notify the Zoning Commissioner accordingly.

(2) Only an owner of a lot abutting or lying directly across a street or other right-of-way from the property in question, an owner of a structure on such a lot, or a homes association (as may be defined under the subdivision regulations or under provisions adopted pursuant to the authority of Section 504) having members who own or reside on property lying wholly or partially within 300 feet of the lot in question are eligible to file a demand for hearing.

(3) It must be determined in the course of the hearing procedure that the amendment would be consistent with the spirit and intent of the original plan and of this article.

Discussion

As noted above, BCZR §1B01.3(A)(7)(b) requires proposed amendments to go through the special exception procedures found in Section 502. Section 502, entitled “Special Exceptions,” contains ten sections. Only one of those ten sections appear to have applicability in this case, notably, §502.1, which itself has nine factors for consideration. Before a special exception may be granted, it must appear that the proposed use will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property’s zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

Baltimore County Code (“BCC”) Section 33, Title 4, entitled “Stormwater Management,” identifies the purpose for the stormwater management Code provisions as follows: “The purpose of this title is to protect, maintain, and enhance the public health, safety, and general welfare by

establishing minimum requirements and procedures to control the adverse impacts associated with increased stormwater runoff.” BCC §33-4-102. In doing so, this County expressly recognizes the potential danger presented to public health, safety and the general welfare by stormwater runoff. Baltimore County in general requires properly managed stormwater runoff in connection with residential, commercial, and other development and redevelopment projects.

Petitioners did not offer any expert witness testimony regarding the impact or effects of changing the existing stormwater management area. Therefore, there is no expert witness testimony in the record to permit the Board to have a fully-informed assessment on what effect, if any: (1) the proposed loss of area will have on the existing stormwater management area, runoff and drainage; (2) the proposed house to be built in the subtracted area will have on the stormwater management area, runoff, and drainage, as the house would be at a higher elevation and would have impervious surfaces for parking and walkways; and (3) the combination of subtracting from the existing stormwater management area in conjunction with the building of the proposed house will have upon the adjacent area, including the Eidelman’s property.

The failure to present evidence regarding the effects of the proposed change, reduction of the stormwater management area, and intended building of a house on the proposed newly-created lot precludes the Board from finding that that Petitioners have met their burden with respect to the special exception factors set forth in BCZR §502.1, particularly factors (A), (D), (E), (H) and (I).

Moreover, the proposed amendment is required to be consistent with the spirit and intent of the original plan. BCZR §1B01.3(A)(7). The intent, as reflected on the original plan, was to have the subject parcel containing the stormwater management pond conveyed to the County, preserving the area from development. As noted above, the inclusion of a stormwater management area serves multiple purposes, including protection of the adjacent properties in the development.

The Eidelmans purchased their adjacent property relying on those representations and understandings. It is reasonable for the Eidelmans to have relied on the “original plan,” which reflects that the 4.10 acres of stormwater management area would be conveyed to the County and reasonable for them to have understood that there would be no future development on that 4.10 acres. Leaving aside whether *any change* would be within the spirit and intent of the original plan, in the absence of evidence that the proposed change to the stormwater management area will have minimal, if any, impact upon the adjacent properties and the Eidelmans’ property in particular, Petitioners cannot prove that that the proposed amendment is consistent with the spirit and intent of the original plan. The purpose for the regulations regarding amendments to final development plans, namely, the consumer protection aspects for purchasers such as the Eidelmans, cannot be ignored or taken lightly.

Conclusion

Based on our review of the evidence presented, the Board of Appeals unanimously concludes that Petitioners have failed to satisfy their burden of proof with respect to the proposed amendment and therefore, Petitioners’ Petition shall be denied.

ORDER

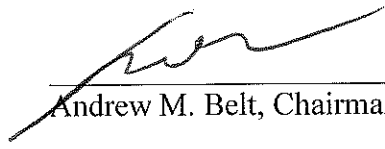
THEREFORE, IT IS THIS 29th day of November, 2017, by the
Baltimore County Board of Appeals,

ORDERED that Petitioners’ Petition to approve: (1) the third amendment of the Final Development Plan for “Worthington Valley Estates Addition” for the: (a) subdivision of the Storm Water Management Reservation; (b) creation of Lot 34; and (c) to increase the total lots from 33 to 34; (2) any other permission deemed necessary by the Administrative Law Judge; and (3) amend the tract boundary for the property of “Worthington Valley Estates Additions” is hereby DENIED.

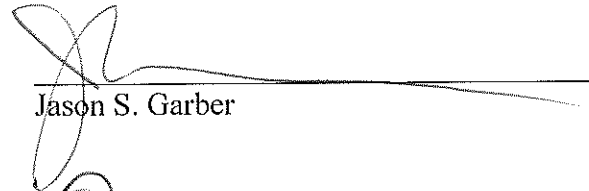
In the matter of Katrina Grewe, et al.
Case No: 17-114-SPH

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 of Procedure.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**



Andrew M. Belt, Chairman



Jason S. Garber



James H. West



Board of Appeals of Baltimore County

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November 29, 2017

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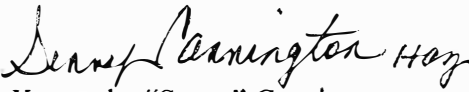
RE: In the Matter of: *Katrina V. Grewe, Wilmington M. Grewe,
Toby A. Grewe – Legal Owners*
Case No.: 17-114-SPH

Dear Messrs. Grewe and Rapisarda:

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: David and Carmenza Heimbach
Gary Eidelman
Bruce E. Doak/Bruce E. Doak Consulting, LLC
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
Michael E. Field, County Attorney/Office of Law