



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

June 5, 2015

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Bruce E. Covahey, Esquire
Covahey & Boozer, P.A.
614 Bosley Avenue
Towson, Maryland 21204

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 Opinion and Order of Dismissal 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,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Paul Godwin
Charles and Ingrid Castronovo
Jeanne Walsh
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Nancy West, Assistant County Attorney, Office of Law

Louis and Ann Workmeister
Donald Durham
Jacqueline Hogarth
Andrea Van Arsdale, Director/Dept. of Planning
Arnold Jablon, Director/PAI
Michael Field, County Attorney, Office of Law

the proposed construction of a stairway and a two level deck on the property located at 1452 Shore Road, which is owned by Paul Godwin (the “Subject Property”) violates Section 102.1 of the B.C.Z.R.; (4) whether the proposed construction of a stairway and a two level deck on the property located at the Subject Property would violate the limitation on extending non-conforming structures and uses no more than 25% of the ground floor area of the existing building; and (5) whether a plan for the proposed development of Subject Property can be approved by Baltimore County without review by all required agencies of substantial amendments/alterations thereto.

ALJ Beverungen went on to opine that the Subject Property is zoned DR 5.5. The property is 22,244 square feet in size, and is improved with a single family dwelling and garage/shed. The Petitioners own adjoining property at 1501 Shore Road, and filed this Petition for special hearing seeking a determination that their neighbor's property is in violation of various Baltimore County laws and regulations.

ALJ Beverungen concluded that B.C.Z.R. Section 500.7 did not provide the OAH with “jurisdiction” to hear this case. In his opinion, he stated that a “special hearing” under Section 500.7 of the B.C.Z.R. is akin to a declaratory judgment proceeding, and provides this office with authority to construe and interpret the zoning regulations as they apply in a particular setting. Antwerpen v. Baltimore County, 163 Md. App. 194, 209 (2005). The problem here is that the Petitioners have asked for an interpretation of the Baltimore County Code (B.C.C.), not the B.C.Z.R. The Subject Property is zoned DR 5.5 which (unlike some of the RC Zones) does not contain lot coverage limitations. It is DEPS which is the arbiter of this issue, and its inspectors (assuming they found a violation) can issue citations for violations of the County Code and environmental regulations.

On November 6, 2014, for want of jurisdiction, ALJ Beverungen dismissed the Petition for Special Hearing pursuant to Section 500. 7 of the B.C.Z.R, without prejudice.

FACTS

On April 6, 2015, pursuant Section 500.10 of the B.C.Z.R and incident to an appeal filed by Petitioners, who are not owners of the Subject Property¹, a special hearing was held before the County Board of Appeals for Baltimore County (the “Board”). The Petitioners were represented by attorneys Lawrence E, Schmidt, Esquire and Christopher Corey, Esquire. The legal owner of the Subject Property was represented by Bruce Covahey, Esquire.

In a preliminary motion argued before the Board, Lawrence E, Schmidt, Esquire, attorneys for the Petitioners, proffered that the Subject Property is waterfront property located in Eastern Baltimore County. He further stated that Mr. Godwin, the legal owner of the Subject Property has begun the construction of a deck. It is the Petitioners’ position that because the Subject Property is located within the Chesapeake Bay Critical Area (“CBCA”), any construction on said property must comply with Baltimore County Code (“BCC”) Article 32-2 et. seq. (Chesapeake Bay Critical Areas Protection) and related State Natural Resources regulations. The Petitioners claim that the issue presented is whether the existing and proposed construction, as identified, violated certain provisions of BCC Article 32-2 et. seq. and their companion state regulations. The Petitioners claim that the existing and proposed construction are in fact a violation of BCC Article 32-2 et. seq. and their companion state regulations.

The Petitioners also made a preliminary motion that would require the Board to hold the

¹ Under Section 500.10 of the B.C.Z.R, “Any person or persons, jointly or severally, or any taxpayer or any official, department, board or bureau of Baltimore County feeling aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the County Board of Appeals. Notice of such appeal shall be filed, in writing, with the Zoning Commissioner within 10 days from the date of any final order appealed from. Such appeals shall be heard and disposed of by the County Board of Appeals as hereinafter provided.”

special hearing in abeyance until such time it receives certain written recommendations from the Director of Environmental Protection and Sustainability (“DEPS”). To support the motion, the Petitioners proffered that pursuant to Section 500.14 of the Baltimore County Zoning Regulations (“BCZR”)², the Board cannot render a decision in a special hearing³, (de novo appeal), concerning property situated in CBCA unless written recommendations describing how the proposed request complied with the particulars of that section. The Petitioners proffered that the Subject Property is indisputably within the CBCA and no such written recommendations related to Section 500.14 (A), (B) or (C) have been received by the Board from the Director of DEPS, as such, the Board cannot render a decision in this case.

In an attempt to clarify the Petitioners position concerning the application of Section 500.14 of BCZR, the Board questioned the appropriateness of requiring Paul Godwin, the legal owner of the Subject Property to seek written recommendations from DEPS because it shifts the burden to him to seek something from DEPS that he may not need for the existing and proposed construction on his property. The Petitioners proffered that it is a benefit to all parties to know exactly how DEPS would view the existing and proposed construction on the Subject Property prior to the hearing held by ALJ Beverungen or soon to be held by this Board. The Petitioners opine that neither party should be penalized for not seeking written comments from DEPS but

²§ 500.14. Within Chesapeake Bay Critical Area.

No decision may be rendered by the Zoning Commissioner on any petition for special exception, variance or special hearing unless the Zoning Commissioner has received from the Director of Environmental Protection and Sustainability, or his designated representative, written recommendations describing how the proposed request would:

- A. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- B. Conserve fish, wildlife and plant habitat; and
- C. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts.

rather the triggering event for the written recommendations is simply the filing of the request to build in the CBCA. As a result, this hearing should be postponed until written comments from DEPS are issued. The Petitioners pointed out that the DEPS did not issue written comments concerning Mr. Godwin's proposed construction on the Subject Property, but it should have, and until such comments are issued all construction should stop.

Bruce Covahey, Esquire; attorney for the Mr. Godwin, owner of the Subject Property, proffered that the preliminary motion offered by the Petitioners supports his motion to dismiss because their petition for special hearing does not require the Board to interpret the Baltimore County Zoning Regulations. Therefore, this Board does not have jurisdiction to hear this matter because only issue presented in this case is whether or not an increase in the amount of lot coverage is a violation of Section 33-2-603 of the BCC.

The Legal Owner also argues the position that the Petitioners have no legal standing in this matter and are attempting to act as private code enforcement officers by protesting the issuance of a building permit to him. The Legal Owner stated that there is nothing in the code or statute that permits an individual appeal the issuance of a building permit. The Legal Owner proffered that only the building permit applicant may appeal the denial of building permit pursuant Section 35-2-302 (e) of the BCC.

The Board sought clarification from the parties concerning the issues presented in this case. The Legal Owner proffered that the issue presented by the Petitioner is whether (i) the amount of lot coverage maintained on the Subject Property in violation of Natural Resources Article and its companion COMAR regulations and/or Section 33-2-603 of the B.C.C, (ii) this Board has jurisdiction to hear a matter unrelated to Baltimore County Zoning Regulations and

³§ 500.7 (Petitions for Public Hearing; Notice).

(iii) and the Petitioners have standing to petition this Board for a special hearing pursuant to Section 500.7 of the BCZR. Conversely, the Petitioners proffer that the issue in this case is the extent to which the Legal Owner has violated the regulations associated with the CBCA because his 2006 construction project and, the existing and proposed construction are in excess of the lot coverage permitted for Subject Property.

The Petitioners further stated that Section 103.5 (Chesapeake Bay Critical Area; Grandfathering)⁴ and Section 104.5 of the BCZR (Uses in the Chesapeake Bay Critical Area) are

⁴§ 103.5. Chesapeake Bay Critical Area; grandfathering.

A. This subsection applies to grandfathering requirements of the Chesapeake Bay Critical Area Local Protection Program and to the residential densities at which certain land within the Critical Area may be developed after June 13, 1988.

B. The rights conferred under this subsection are subject to:

1. The provisions in § 32-4-273 of the Baltimore County Code, pertaining to the time limit for validity of subdivision plats and, if applicable, to the provisions of Sections 103.3 and 103.4 of the Baltimore County Zoning Regulations;

2. The provisions in Article 33, Title 2, Subtitles 3, 4, and 5 and § 33-2-604 of the Baltimore County Code, pertaining to wetlands, buffers, habitat protection areas and water-dependent facilities; and

3. Other applicable county laws or regulations in effect at the time a right is exercised.

C. The county shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on June 13, 1988. If the existing use does not conform with the provisions of the local protection program, its intensification or expansion may be permitted only in accordance with Section 104.5 of these regulations 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.

D. Lots of record or record lots as of December 1, 1985.

1. Each individual lot or parcel of land that was either a lot of record or a record lot on December 1, 1985, may be developed with a single-family dwelling if a dwelling was not already in existence and if a single-family dwelling was a use permitted on the property under the zoning in effect on December 1, 1985, notwithstanding that such development may be inconsistent with the density provisions of the approved local protection program and provided that this right to develop is subject to all the Zoning Regulations, other than density or lot size, in effect at the time the right is to be exercised; unless the lot or parcel is within the recorded plan or plat of a land subdivision approved by the county before December 1, 1985, in which case the limitations and rights pertaining to the approved plan or plat shall govern.

2. All lots that are developed under this paragraph shall be brought into conformance with the local critical area program, including the consolidation or reconfiguration of lots not individually owned, to avoid or minimize impacts to wetlands, buffers, and habitat protection areas, as determined by the Department of Environmental Protection and Sustainability.

E. Growth allocation will not be required for subdivisions of land where each resultant parcel or lot contains a dwelling which existed on December 1, 1985.

F. Residential subdivision of land other than for single-family dwellings, as covered by Paragraphs D and E of

dispositive to the outcome of the issues presented in this case. Section 103.5 (B) (1) and (B) (2) of the BCZR specifically adopts and incorporates certain provisions of the BCC; including Section 33-2-604 of the BCC. The Petitioners proffered that these grandfathering provisions in this section of the BCZR are relevant to the Legal Owner's ability to further improve the Subject Property in the CBCA.

The Petitioners further argue that Section 104.5 of the BCZR⁵ states that where any use within the CBCA that becomes nonconforming on or after the effective date of this section⁶ is subject to the provisions of "Sections 104.1, 104.2 and 104.3 and to the variance provisions and procedures of § 32-4-231, § 33-2-205, or § 33-2-603 of the Baltimore County Code, whichever is or are applicable."

The Petitioner contends that under Section 103.5 and Section 104.5 of the BCZR because they incorporate provisions in the BCC that are germane to the CBCA, the Petitioners have standing to file this petition under Section 500.7 of the BCZR⁷. Finally, the Petitioners contend that the Board has jurisdiction and authority to construe the aforementioned Baltimore County Zoning Regulations relating to the CBCA and how they impact the Subject Property.

this subsection, is permitted in accordance with an approved final development plan or record plat if the approval was granted by the county before June 1, 1984.

G. For nonresidential developments, a lot or parcel of land may be developed with a use permitted on the property under the zoning or use regulations in effect on December 1, 1985, notwithstanding that such development may be inconsistent with the provisions of Article 33, Title 2 of the Baltimore County Code and provided that this right to develop is subject to the Zoning Regulations in effect at the time the right is to be exercised; unless the lot or parcel is within the recorded or approved plat or a plan of a land subdivision approved by the county before December 1, 1985, in which case the limitations and rights pertaining to the approved plan or plat shall govern.

⁵§ 104 Uses in Chesapeake Bay Critical Area.

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 § 32-4-231, § 33-2-205, or § 33-2-603 of the Baltimore County Code, whichever is or are applicable.

⁶Bill Nos. 32-1988; 124-1991; 9-1996; 137-2004

⁷The Petitioners also pointed out that there is Maryland case law that support the proposition that a neighbor has

DISCUSSION

The Board having evaluated the proffers made by the attorneys of the respective parties and reviewed section of the Baltimore County Code and the Baltimore county Zoning regulations has determined that this Board lacks the jurisdiction to hear the matter. The Board agrees with the Legal Owner the issues presented in the petition for special hearing filed by the Petitioners would require it to interpret and construe certain sections of the Baltimore County Code for which it has no authority. The Petitioners preliminary motion, which would require this Board to hold this special hearing in abeyance until the Director of DEPS could provide written recommendation consistent with Section 500.14 of BCZR, is dismissed because this Board lacks jurisdiction to hear the underlying particulars of the petition for special hearing.

The Board agrees with the Legal Owner's position that the Petitioners petition for special hearing does not involve the interpretation of the Baltimore County Zoning Regulations; therefore, the Board lacks jurisdiction to hear this matter. As such, the Legal Owner's motion to dismiss is granted.

ORDER

THEREFORE IT IS THIS, 5th day of June, 2015, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Special Hearing in case number 15-055-SPH is hereby **DISMISSED**.

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 Chairmen



Benfred B. Alston

Richard A. Wisner was a Board member at the hearing on April 6, 2015. He was not reappointed and his term expired on April 30, 2015.