

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
W side of Cowenton Avenue, 980 feet		
S of Raxis Avenue	*	OFFICE OF
11 th Election District		
5 th Councilmanic District	*	ADMINISTRATIVE HEARINGS
(Cowenton Avenue)		
	*	FOR BALTIMORE COUNTY
Damian and Bozena Michalak		
<i>Petitioners</i>	*	CASE NO. 2011-0183-SPH

* * * * *

ORDER

This matter comes before this Administrative Law Judge as a Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) requesting approval of a 75 foot wide buildable lot containing 0.75 acre in lieu of the required 85 feet lot width (no contiguous ownership for 6 years) on a lot of record for one proposed single family dwelling. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1, a site plan that was prepared and submitted for the property.

Appearing at the public hearing in support of the requested special hearing relief were the owners of the property, Damian and Bozena Michalak and John Sullivan, their consultant. There were no Protestants in attendance at the hearing.

Testimony and evidence offered by the Petitioners demonstrated that the property which is the subject of this Special Hearing request consists of 0.75 acre and is zoned D.R. 3.5 H. The property is an unimproved parcel of land located on Cowenton Avenue in White Marsh. The Michalaks testified that they purchased the subject property through a bank foreclosure and are hoping to one day build a single family residence on this property. In order to move closer to constructing a home on the lot, the Office of Zoning requested that the property owners file this

Special Hearing request before the Office of Administrative Hearings. Section 259.9.B.3 requires that the minimum lot width for any single family dwelling in the Honeygo area be at least 85 feet in width. However, an exception has been created for lots that were created by way of a Development Plan or a CRG Plan approved prior to the passage of the Honeygo regulations. The applicants submitted as Petitioners' Exhibit 3 the subdivision plat for the subject property which was created in 1941 and is identified in the Land Records of Baltimore County as the subdivision as part of the property of Herman Koch. Accordingly, the property which is the subject of this request is not subject to the requirements of this 85 feet wide provision. It should also be noted that many of the other houses along this section of Cowenton Avenue have been built on lots with less than 85 feet.

Since this is an old subdivision and houses have already been constructed on properties with lot widths less than 85 feet, the Office of Planning by virtue of their comment dated January 4, 2011 have no objection to the Petitioners' request so long as the Planning Office can review the location of the house on this property.

While there is not a problem from a zoning perspective regarding the construction of a home on this lot, there is tremendous concern over the fact that the subject property cannot pass percolation standards as imposed by Baltimore County. The property is not served by public sewer and therefore a septic system must be installed in order for a house to be constructed. The comment issued by the Department of Environmental Protection and Resource Management (DEPRM) dated December 23, 2010 indicates that the subject property failed to pass percolation standards and therefore a septic system cannot be approved for this house. The applicants and owners of this property must wait until public sewer is extended to this area in order for them to receive a building permit to construct the home. Therefore, as a condition of approval of this

Special Hearing request, I shall restate the obvious that a building permit cannot be issued for this property until such time as a proper sewage disposal system is approved by DEPRM.

Finally, there is located within the file a Certificate of Publication reflecting that on January 13, 2011, an advertisement was published in *The Jeffersonian* announcing the January 31, 2011 public hearing in this matter, and the file also included a Certificate of Posting reflecting that William D. Gulick, Jr. posted the requisite sign on the property on January 15, 2011. As such, I find that the posting and notice requirements of the B.C.Z.R. have been satisfied in this matter.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 3rd day of February, 2011 that Petitioner's request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit a 75 foot wide buildable lot(s) containing 0.75 acre in lieu of the required 85 foot lot width (no contiguous ownership for 6 years) on a lot of record for one proposed single family dwelling be and is hereby GRANTED subject to the following conditions:

1. Petitioners may apply for permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. While the Special Hearing request from a zoning perspective has been granted, the Petitioners shall not be able to receive a building permit to construct a home on this lot until such time as they provide a method by which the sewage may properly be disposed of from any house to be constructed on the property. As stated previously, the property has failed percolation tests. In addition, public sewer is not available at this time. As a

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

____SIGNED_____
TIMOTHY M. KOTROCO
Administrative Law Judge
for Baltimore County

TMK/pz