

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
E side of Opie Road, 20 feet N of the		
c/line of Maple Avenue	*	OFFICE OF ADMINISTRATIVE
11 th Election District		
5 th Council District	*	HEARINGS FOR
(8 Opie Road)		
	*	BALTIMORE COUNTY
Matthew B. and Jill Benicewicz		
<i>Petitioners</i>	*	CASE NO. 2012-0105-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Special Hearing filed by the legal owners of the property, Matthew B. and Jill Benicewicz. The Petitioners are requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to permit (two) 2 one-family detached dwellings on two (2) lots having an area less than required for the RC 2 zone as permitted by Section 304.1 of the B.C.Z.R. There now exists one dwelling on the site, and Petitioners propose to create one additional lot. Lot 1 shall contain a total of .7175 acres and Lot 2 shall contain a total of .69138 acres. Lot 1 shall contain the existing improvements, including the existing residence. Lot 2 shall be available for a proposed dwelling as shown on the site plan, which was marked as Exhibit 1.

Appearing at the public hearing held for this case were Matthew B. and Jill Benicewicz, Bernadette Moskunus of Site Rite Surveying and J. Neil Lanzi, Esquire, attorney for Petitioners. It appears the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance at the hearing, and the file does not contain any letters of protest or opposition.

The Zoning Advisory Committee (ZAC) comments were received and are made a part of

the record of this case. Comments were received from the Department of Environmental Protection and Sustainability (DEPS), dated November 16, 2011. These comments were submitted pursuant to B.C.Z.R §500.14, given that the property is within the critical area. The DEPS comments will be attached to this order and it will be Petitioners' responsibility to address each prior to the issuance of any permits for this project. In addition a ZAC comment was received from the Department of Planning, dated November 9, 2011, which recommends approval of the undersized lot request.

The Petitioners' have lived on the premises since 2000, and reside in a single-family dwelling on the site. The total site acreage is approximately 1.4 acres, and Petitioners propose to create two lots on this parcel. Lot 1 would be approximately 0.7175 acres, and would contain the existing dwelling at 8 Opie Rd. Lot 2 would be approximately 0.7 acres, and would eventually be improved with a single-family dwelling, as shown on the site plan, Exhibit 1.

Petitioners' counsel explained that only the lot areas would be deficient under the RC 2 Zoning, and that all other height and area requirements would be satisfied. Petitioners also presented evidence that the lots which comprise the subject property were originally created by a 1924 Plat of "Bird River Beach," which was recorded among the land records of Baltimore County, See Exhibit 2. Finally, Petitioners confirmed that they do not own "sufficient adjoining land" which would enable them to satisfy the RC 2 lot size requirements.

The Petitioners presented Bernadette Moskunas as an expert witness. Ms. Moskunas is with Site Rite Surveying, and was accepted as an expert in Baltimore County zoning and land use regulations, and her testimony was presented by way of a proffer. Ms. Moskunas testified that in her opinion the Petitioners' proposal satisfied B.C.Z.R §304. She explained that the neighborhood consists of single-family dwellings on +/- ½ acre lots, and thus she believed the two lots and two

single-family dwellings proposed would be consistent and compatible with this general pattern of development. Ms. Moskunas also indicated that prior orders of the Zoning Commissioner have also granted similar relief to other lot owners in this immediate vicinity. See, e.g., Case Nos. 86-372-A (4 Opie Road) and 94-154/155-SPHA (6 Opie Road).

The Petitioners also submitted letters from their adjoining neighbors, which indicate they support the request to create one additional lot on the subject property. See Exhibits 3, 4 and 5. In these circumstances, it appears Petitioners have satisfied the requirements of B.C.Z.R. §304 (as that provision has been construed in *Mueller V. Peoples Counsel*, 177 Md. App. 43 (2007)) and the granting of relief in this case will not be detrimental to the community's health and general welfare.

Pursuant to the advertisement, posting of the property and public hearing on this Petition and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, this ___16th_____ day of December, 2011 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief under Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to permit (two) 2 one-family detached dwellings on two (2) lots having an area less than required for the RC 2 zone, pursuant to Section 304.1 of the B.C.Z.R., be and is hereby GRANTED, subject, however to the following:

1. The Petitioners may apply for their building permit and may be granted same upon receipt of this Order, however the Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day appellate process from this Order has expired. If for whatever reason, this Order is reversed, the Petitioners will be required to return and be responsible for returning said property to its original condition.

2. Petitioner must comply with the DEPS comments attached hereto and incorporated herein prior to the issuance of any building permits.

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:sma