

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(Gilroy Road)		
8th Election District	*	OFFICE OF
3rd Council District		
Gilroy, LLC	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2021-0009-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Special Hearing filed by Gilroy, LLC, legal owners (the “Petitioner”) for the property located on Gilroy Rd. in Hunt Valley (the “Property”). The Special Hearing was filed pursuant to the Baltimore County Zoning Regulations (“BCZR”) §500.7 to determine whether a waiver should be approved to permit development in a riverine floodplain including a bridge, grading, private road, retaining wall, utilities and landscaping.

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. J.D. Hergenroeder of Gray & Sons, the parent company of Petitioner, Gilroy, LLC, appeared in support of the Petition along with Jill Schopf, PE of Century Engineering who prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1). Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt represented the Petitioner. There were no Protestants or interested parties at the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), Department of Environmental Protection & Sustainability (“DEPS”), the Department of State Highway Administration (“SHA”) and the Department of Public Works (“DPW”). Those agencies are not opposed to the requested relief.

The case proceeded by way of modified proffer by Mr. Schmidt. Jill Schopf, PE was admitted as an expert professional engineer. (Pet. Ex. 4). Michael Peranunzi, RLA was admitted as an expert landscape architect. (Pet. Ex. 5). The Property is approximately 13.44 acres, unimproved, and is zoned Manufacturing, Light – Industrial Major (ML-IM). To the north of the Property are 2 warehouse buildings, west is I-83, and State Highway Administration (“SHA”) owned properties are south and east. Warren Rd. is south of the SHA property. The Property is owned by the Petitioner, a wholly-owned subsidiary of Gray & Sons, a contracting and paving business. In 2011, the Petitioner received approval to use the Property as a construction equipment storage yard (Case No.: 2011-364-SPH).

As shown on the aerial photographs, the Property is vacant. (Pet. Exs. 2, 3). Street view photographs of the Property were provided and accurately depicted the Property as described by Mr. Schmidt. (Pet. Exs. 14A-14G). Beaverdam Run is a stream which runs under I-83 and continues along the northern end of the Property resulting in a riverine floodplain. The construction storage yard will be located on the southern end of the Property, adjacent to the SHA property. The closest residential use is located on the western side of I-83.

In order to get in and out of the Property and use it for a construction equipment storage yard, the Petitioner needs to build a bridge over the north western corner, as well as a private road along the western side parallel to I-83. State Highway Administration (“SHA”) has granted Petitioner temporary construction access through the SHA parcel from Warren Rd. in order to build the bridge and road on the Property. (Pet. Ex. 13). Toward that end, Petitioner is in need of a floodplain waiver to develop within the riverine floodplain. (Pet. Ex. 1). Without the waiver, the Property will remain landlocked and unusable as a storage yard.

DPW reviewed the requested waiver and Hydrological & Hydraulics Analysis Report prepared by Century Engineering dated September, 2020 (Pet. Ex. 10). DPW concluded that proposed private bridge, road, retaining wall, utilities and landscaping in the riverine floodplain is not detrimental to the floodplain management program, subject to conditions. (Pet. Ex. 12). DOP was also in agreement as to the proposed development in the floodplain, subject to additional plantings to protect the I-83 view shed. (*Id.*). DOP noted that I-83 is a Baltimore County Scenic Road.

Petitioner has obtained approval from Development Plans Review (“DPR”) of the Grading Plan on January 25, 2021. (Pet. Ex. 6). Additionally, the Concept Storm Water Management Plan (“SWM”) was approved on February 10, 2021. (Pet. Ex. 7). On March 15, 2021, SHA approved a Flood Study. (Pet. Ex. 8). On March 22 2021, the County approved the Erosion and Sediment Control Plan. (Pet. Ex. 9). On October 28, 2020, the County reviewed and approved a Hydrological & Hydraulics Analysis Report prepared by Century Engineering. (Pet. Ex. 10). The Final Grading Plan was approved January 13, 2021. (Pet. Ex. 11).

Decision

BCC, §32-4-414(c)(2) prohibits development in a floodplain except for the installation of a pond, culvert, bridge, street, utility or drainage facility that the County finds is not detrimental to floodplain management programs. In this case, DPW, in its ZAC comment, made a finding that the construction of a bridge, road and retaining wall will not be detrimental to the floodplain management programs. (Pet. Ex. 12). A waiver of the provisions in BCC, §32-4-414 are permitted after special hearing pursuant to BCC, §32-8-303 as follows:

(a) In general. Waivers may only be issued upon:

(1) A showing of good and sufficient cause;

- (2) A determination that failure to grant a waiver would result in exceptional hardship, other than economic hardship to the applicant; and
- (3) A determination that the granting of a waiver will not increase flood heights, impact public safety, incur extraordinary public expense, create nuisances, cause fraud or victimization of the public or conflict with existing local and state laws and ordinances.

(b) Minimum necessary. The waiver action shall be the minimum necessary considering the flood hazard, to afford relief.

(c) Comments. In considering a waiver action, comments from the state coordinating office and the County Department of Public Works shall be taken into account and maintained with the permit file.

The Site Plan reveals that one-half (1/2) of the Property is comprised of environmental features including floodplains, wetlands and a stream. The Property is landlocked; there is no access into the Property. The Petitioner was granted relief to operate a construction equipment storage yard in 2011 (Case No. 2011-364-SPH). All storage yard activities will be on the southern end of the Property, outside of the flood plain. Based on the physical elements of the Property as well as the favorable DPW comment, I find that good and sufficient cause exists to grant a waiver. I also find that if a waiver is not granted, it will result in exceptional hardship (not economic hardship) to the Petitioner because, without the construction of the bridge, access road and retaining wall, the Property is unusable as a storage yard. I find that there was no evidence that granting a waiver here will increase flood heights, impact public safety, incur extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local and state laws and ordinances. I further find that granting a waiver here is the minimal necessary, considering the flood hazard, in that the Petitioner is not proposing development other than the minimum access improvements. The bridge is necessary to span the stream and the road is necessary to access the proposed storage yard on the southern end.

THEREFORE, IT IS ORDERED, this 14th day of **April, 2021** by this Administrative Law Judge, that the Petition for Special Hearing from the Baltimore County Zoning Regulations (“BCZR”) §500.7 to determine whether a waiver should be approved to permit development in a riverine floodplain including a bridge, grading, private road, retaining wall, utilities and landscaping is hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
2. Prior to issuance of Permits, Petitioner must comply with ZAC comments submitted by DOP, a copy of which is attached hereto and made a part hereof.
3. Prior to issuance of Permits, Petitioner must comply with ZAC comments submitted by DPW, a copy of which is attached hereto and made a part hereof.

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

Signed _____
MAUREEN E. MURPHY
Administrative Law Judge
for Baltimore County

MEM/dlm