

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(15605 Dark Hollow Road)		
5th Election District	*	OFFICE OF
3rd Council District		
PTL RE Cor. c/o Jim Finnerty	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2020-0100-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of a Petition for Special Hearing filed on behalf of PTL RE corp. c/o Jim Finnerty, legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 304 of the Baltimore County Zoning Regulations (“BCZR”) to determine whether or not to approve an undersigned RC2 zoned lot with an area of .057 acres in lieu of the minimum required 1 acre. At the hearing, counsel for the Petitioner moved to amend the Petition by withdrawing the request for relief under BCZR § 304 and asking to proceed under BCZR § 500.7.

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. Jim Finnerty, Petitioner, did not appear in support of the petition. Timothy Kotroco, Esq. appeared and represented the Petitioner. Land use consultant, R. Craig Rodgers, also appeared and the site plan that he prepared was marked and accepted into evidence as Petitioner’s Exhibit 1. Michael McCann, Esquire represented Meriwether Morris, an adjacent neighbor and opponent of the requested relief. Several other neighboring property owners testified in opposition.

Substantive Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), dated June 5, 2020, which did not oppose the requested relief.

Mr. Rodgers explained the site plan. He testified that the subject parcel is .57 acres and that it is zoned RC 2, which requires a minimum of 1 acre for a buildable lot. He testified that the lot was created by a metes and bounds deed in 1959. He also testified that the RC 2 zoning classification was enacted in 1979. Mr. Rodgers further testified that a septic plan was approved by the County in 1996 and that the approval was confirmed in 2020. Letters to this effect were admitted as Petitioner's Exhibit 2. He further identified Petitioner's Exhibit 3, a Memo from the Department of Planning dated June 5, 2020, which states in relevant part that "the department has no objection to this request," because "the property is an existing lot of record prior to 1979." Mr. Rodgers also identified Petitioner's Exhibit 4 as the deed chain tracing title back to 1959. The exhibit shows that the Petitioner, PTL RE Corp., purchased the parcel at tax sale for \$6,720.00. He further identified Petitioner's Exhibits 6 and 7 as charts he created on "My Neighborhood" maps that show residences in the general vicinity of this parcel that were built on lots of less than 1 acre. Only one such property on these charts was built after 1979, and it was not explained how that was permitted. Finally, Mr. Rodgers testified that he has never applied for relief under BCZR § 304 for a parcel in an RC 2 zone, but that he was told by the Zoning office that this was what was required in order to obtain a building permit.

On cross-examination Mr. Rodgers was asked if the zoning in force at the time the lot was created in 1959 was RDP (Rural Deferred Plan). He stated that he believes it was Residual R 6, which he said required a lot of only 6000 sq. ft. in order to build a residence. He acknowledged that he did not know whether the county had authorized the construction of any of the residences on Petitioner's Exhibits 6 and 7. He stated that he believes that the subject parcel is a buildable lot because it was in existence prior to the adoption of the RC 2 zone in 1979. He could not cite any provision of the BCZR to support that opinion. Mr. Rodgers also acknowledged that this parcel is

not eligible for relief under BCZR § 304 as an undersized lot because it was not created prior to 1955, as required by this regulation.

Ms. Morris and several other adjoining neighbors and community members strenuously objected to the requested relief. They stressed that the RC 2 zone is meant to protect the county's agricultural areas and that approval of this undersized lot would run contrary to that legislative intent and would be unlawful. Mr. McCann argued that the requested relief is not authorized by the grandfathering provisions of BCZR § 103.1, which requires that a parcel be a "development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the (then) Baltimore County Planning Commission (now Planning Board) and approved or tentatively approved or tentatively approved (including any approval made subject to any condition or conditions) under the then existing official procedure in Baltimore County, prior to the adoption of these regulations." He further stressed that BCZR § 103.3 is also not applicable because this parcel is not a "property covered by a recorded subdivision plat which was approved by the Baltimore County Planning Commission or Board before the effective date of this subsection, and which remains in effect."

use...In *Rockville Fuel & Feed Co. v. Gaithersburg*, 266 Md. 117, 291 A.2d 672 (

Powell, 368 Md. at 411–12.

In this case the very first requirement was not satisfied because a valid building permit was never issued prior to the change in zoning. Petitioner’s Exhibit 2 shows that a septic plan was approved in 1996; and Petitioner’s Exhibit 3 shows that the DOP does not oppose the requested relief (which had been filed under BCZR § 304.1) because “the property is an existing lot of record prior to 1979.” But neither of these facts provides any legal basis to grant the requested relief, i.e., to allow the construction of a residence on a parcel of .57 acres in the RC 2 zone.

Finally, this “downzoning” did not amount to a constitutional “taking” that would require compensation by the county because it did not deprive the property owner of all reasonable uses of the property. Again, the law is clear:

County Comm'rs of Queen Anne's County v. Miles,

Baltimore v. Byrd,

Mayor and City Council of

for any reasonable purpose and goes beyond permissible regulation, must be
Congressional School of
Aeronautics, Inc. v. State Roads Commission,
Marino v. City of Baltimore,
Board of County Comm'rs of Talbot County,
denied,
Cohn,

Walker v.
cert.
City of Baltimore v.

Congressional
School of Aeronautics, Inc. v. State Roads Commission,

City of Salisbury,

See also Village of Euclid v. Ambler Realty Co.,
Allied American Mutual Fire Insurance Co. v. Comm'r
of Motor Vehicles,

THEREFORE, IT IS ORDERED this **16th** day of **February, 2021** by this Administrative Law Judge, that the Petition for Special Hearing seeking relief under BCZR § 500.7 to approve an undersigned RC2 zoned lot with an area of .057 acres in lieu of the minimum required 1 acre be and is hereby DENIED.

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

PMM:dlm

Signed _____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County