

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(2301 Walnut Ave.)	*	OFFICE OF
13 th Election District		
1st Council District	*	ADMINISTRATIVE HEARINGS
Clyde Slacum		
<i>Legal Owner</i>	*	FOR BALTIMORE COUNTY
Petitioner	*	Case No. 2020-0032-SPHA

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

This matter comes before the Office of Administrative Hearings (“OAH”) for Baltimore County. The Petitioner (Clyde Slacum) originally filed a Special Hearing pursuant to §§ 32-4-107 and 32-4-414 of the Baltimore County Zoning Regulations (“BCZR”) to permit the construction of a new warehouse building in a riverine floodplain. In addition, a Petition for Variance was filed pursuant to BCZR §§ 255.2 and 243.1 to allow a front setback of 53 ft. in lieu of the required 75 ft.; per §§ 255.2 and 243.2 to allow a side yard setback of 3 ft. in lieu of the required 50 ft.; and per §§ 255.2 and 243.3 to allow a rear yard setback of 4’ in lieu of the required 50 ft.

By Opinion and Order dated August 26, 2020, the undersigned denied the Petition for Special Hearing and granted with conditions the Petition for Variance.

On September 21, 2020, Patrick Richardson, the engineer who represented the Petitioner, filed via e-mail a timely Motion for Reconsideration of the August 26, 2020 Opinion and Order. In the Motion, Mr. Richardson urges¹ that the facts of this case are like those in Case No. 2019-0032-SPHA, and that the relief requested here should have been granted.

I disagree. The reason I granted the Motion for Reconsideration in *that* case was that I had

¹ In my view Mr. Richardson, in addition to highlighting certain facts in the case, is also advancing a legal argument by citing a prior ALJ ruling as supposed precedent for this case. This he is not licensed to do. As a member of the bar and the ALJ in this case this puts me in an awkward position, since I am not supposed to condone or facilitate the practice of law without a license.

admittedly misconstrued certain testimony and exhibits, and had therefore applied the wrong sections of the County Code. The construction activities that were planned to occur within the riverine floodplain in that case were of the type permitted in a riverine floodplain as exceptions under BCC § 32-4-414 (c)(2), i.e., for “[t]he installation of a pond, culvert, bridge, street, utility or drainage facility.” In that case, once these flood amelioration measures were constructed the proposed project would no longer be in the floodplain.

But in this case no such flood amelioration measures were proposed in the site plan or described at the hearing; nor are they proposed in the Motion for Reconsideration. To the contrary, all that is proposed in this case is the adding of fill directly in/on over one thousand square feet of riverine floodplain for the purposes of then constructing a *new building* on that foundation. Although the building would thereby be raised out of the floodplain, its foundational structure, which would not be a “pond, culvert, bridge, street, utility or drainage facility,” would remain in the riverine floodplain. In my view, this is therefore still prohibited by BCC § 32-8-304(2), and by Part 125 of the Building Code, which both flatly bar “new buildings” in a riverine floodplain.

In addition, even if this were a case where a floodplain waiver were permissible, such as construction of a new building within a *tidal* floodplain, the petitioner would still have been required to obtain a request for such relief from the Director of Public Works under BCC § 32-4-107(a)(1). No such request has been made here.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **29th** day of **September, 2020**, that the Motion for Reconsideration be, and is hereby DENIED.

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

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

PMM/dlw