

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>(3912 Briar Point Road)</b>		
15th Election District	*	OFFICE OF
6 <sup>th</sup> Council District		
Al Czervik, LLC,	*	ADMINISTRATIVE HEARINGS
Legal Owner		
	*	FOR BALTIMORE COUNTY
Greg Remeikis,		
Contract Purchaser	*	Case No. 2021-0168-SPH
<b>Petitioners</b>		

\* \* \* \* \*

**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Special Hearing filed by Al Czerik, LLC, legal owner, and Greg Remeikis, contract purchaser (“Petitioners”) for the property located at 3912 Briar Point Rd., Bowleys Quarters (the “Property”). A Special Hearing was requested under Baltimore County Zoning Regulations (“BCZR”), §1A04.3.B.1.b(1) to approve a proposed single family dwelling with a lot area of 0.994 acres in lieu of the minimum required 1.5 acres, and for variance relief from BCZR, §1A04.3.B.2.b to approve a proposed single family dwelling with a lot line setback as close as 8 ft. in lieu of the minimum required 50 ft.

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. Greg Remeikis appeared in support of the Petition along with John Motsco, PE of DS Thaler and Associates who prepared a site plan (the “Site Plan”). (Pet. Ex. 3). Jonathan M. Herbst, Esquire represented the Petitioners. There were no Protestants or interested citizens at the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”) and the Department of Environmental Protection and Sustainability (“DEPS”) which agencies did not oppose the requested relief.

The case proceeded by way of modified proffer by Mr. Herbst. John Motsco, PE was accepted as an expert in civil engineering. (Pet. Ex. 1). Mr. Motsco testified that the Property is 0.994 acres +/- (43,304 sf) and is improved with a one-story, 750 sf +/- home along with a detached garage located in the rear yard measuring 360 sf +/- (Pet. Exs. 4-7). It is zoned Rural Residential (RC5). Petitioners propose to remove the existing home and detached garage and replace them with a home and attached garage as shown on the Site Plan. (Pet. Ex. 3). An architectural rendering of the proposed replacement dwelling and garage was provided. (Pet. Ex. 8). As depicted in the rendering, the new garage is proposed to be attached to the front of the home but is unrecognizable as such in the photo as it blends into the front of the home. Per Mr. Motsco's testimony, the replacement dwelling and attached garage will measure approximately 2,000 sf +/-.

Mr. Herbst explained that the Petition was filed for Special Hearing for the minimum acreage requirement and for Variance relief for the side yard setback. However, the Office of Zoning Review indicated that only the former relief was required. As a result, the filing fee for the variance relief was returned and the case number reflects only Special Hearing relief. Mr. Motsco opined that the variance relief for the side yard setbacks is needed as filed. Toward that end, Mr. Motsco testified that the Property was created by deed and that it could never meet the minimum acreage requirement or 50 ft. side yard setbacks required in the RC5 zone.

Mr. Motsco also opined that the Property is irregularly shaped with the northern boundary line measuring 416.44 ft., the southern boundary line measuring 479.86 ft., the eastern boundary line measuring 84.29 ft., and the western boundary line measuring 127.49 ft. The eastern boundary line fronts on Briar Point Rd. and the western boundary line abuts Goose Harbor Rd. Mr. Motsco acknowledged that the Property is located in the Limited Development Area ("LDA") and is subject to Chesapeake Bay Critical Area ("CBCA") requirements. The Site Plan reflects that the

proposed improvement is within the maximum lot coverage requirement of 15%. (Pet. Ex.3).

### SPECIAL HEARING

A hearing to request special zoning relief is proper under BCZR, §500.7 as follows:

The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

"A request for special hearing is, in legal effect, a request for a declaratory judgment." *Antwerpen v. Baltimore County*, 163 Md. App. 194, 877 A.2d 1166, 1175 (2005).

BCZR, §1A04.3 requires Special Hearing relief for an RC5 lot which does not meet the minimum 1.5 acre requirement:

§ 1A04.3. - Height and area regulations.

B. Area regulations.

1. Lot area; density control.

a. A lot having an area of less than one and one-half acres may not be created in an R.C.5 Zone. The maximum gross residential density is 0.5 dwelling per acre

b. Exceptions to minimum lot size.

(1) The owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003, but does not meet the minimum acreage requirement, or does not meet the setback requirement of Paragraph 2, may apply for a special hearing under Article 5 to alter the minimum lot size

requirement. However, the provisions of Section 1A04.4 may not be varied.

One way to read the above Section is that only Special Hearing relief is needed to alter both the minimum acreage requirement and the setbacks. As is often the case, the above Section is not the model of clarity. I note that adjacent property (3914 Briar Point Rd.) needed the same relief in Case No.: 05-194-SPH and that only Special Hearing was filed and granted (although a note was made in that Opinion and Order that variance relief was sought and discussed as part of the Petition for Special Hearing). As I read it, and in the interest of being consistent, Special Hearing relief is needed to alter the minimum lot size and variance relief is needed to alter the setbacks. Indeed the Petitioner here filed for both.

Based on the evidence, I find that the Special Hearing relief to permit the proposed replacement dwelling to be built on 0.994 acres +/- land, as reflected in the Site Plan, should be granted. As was found in Case No.: 05-194-SPH, the Property here would not be buildable if strict compliance with the minimum acreage was required, and many other houses in the community are built on undersized lots, most of which were built prior to 2004. I also find that the requested Special Hearing relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the lack of opposition.

#### VARIANCE

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

The Property is unique in that it is irregularly shaped setting it apart from other properties in the neighborhood. It is long and narrow and therefore cannot meet the minimum 50 ft. side yard setbacks required in BCZR, B.2.b. Due to the unusual configuration of the Property, I find that the Petitioners would suffer a practical difficulty and unreasonable hardship if the proposed side yard setbacks are not granted because the Petitioners would not be able to construct a reasonably sized replacement dwelling. I also find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or general welfare, particularly in light of the lack of opposition.

Petitioners will need to comply with the CBCA regulations in accordance with the DEPS Comment.

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The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their 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, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must comply with the DEPS ZAC comment, a copy of which is attached hereto and make a part thereof.

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

A handwritten signature in black ink that reads "Maureen E. Murphy". The signature is written in a cursive style with a large, stylized initial 'M'.

MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm