√11-18-19 PM

IN RE: **PETITION FOR SPECIAL HEARING** **(873 Ivy Hill Road)** 8th Election District 2nd Council District George S. Nyquist, Jr. *Legal Owner* **Petitioner**	* * * * *	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **Case No. 2019-0434-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 George S. Nyquist, Jr., legal owner ("Petitioner"). The Special Hearing was filed pursuant to Section 500.6 of the Baltimore County Zoning Regulations ("BCZR") for a waiver pursuant to Part 125.2 Building Code, and Sections 32-4-414, 32-4-107(a)(2) and 32-8-301 of the BCC to permit a replacement attached garage in a riverine flood plain. A site plan and an amended site plan were marked and admitted as Petitioner's Exhibit 1, and 1A, respectively.

The Petitioner, George S. Nyquist, and Rick Richardson from Richardson Engineering, LLC appeared in support of the petition. There were no protestants or interested citizens in attendance. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee ("ZAC") comments were received from the Department of Planning ("DOP"), the Department of Environmental Protection and Sustainability ("DEPS") and the Department of Public Works ("DPW").

SPECIAL HEARING

Mr. Richardson explained that Petitioner's Exhibit 1A is the accurate depiction of the site and shows that the proposed garage will be located in the footprint of the previously existing

attached garage. Exhibit 2 is an aerial photograph from 2014 that shows the attached garage before it was removed. The owner, Mr. Nyquist, purchased the property in 2017 and at that time the garage had been removed. Nyquist testified that he had spoken with the previous two owners of the property and had been assured that neither the house nor the garage had ever experienced any flooding. He explained that he wants to rebuild the garage in order to enhance the livability of the house. Both witnesses acknowledged that if the requested waiver is granted that they will still have to comply with all applicable Code and Building Code restrictions, including those in BCC Sec. 32-8-207, as well as with all the ZAC Comments.

Based on the record evidence I find that the requested riverine floodplain waiver can be granted under BCC Sec. 32-4-107(a) because the size, scope and nature of the proposed reconstruction of the attached garage does not justify strict compliance with the BCZR. Further, as noted above, per the ZAC comments, the reconstruction of the garage will be in strict compliance with all other County laws and regulations. Finally, I find that this waiver can be granted within the spirit and intent of the BCZR and without harming the public health, safety and general welfare.

THEREFORE, IT IS ORDERED this **20th** day of **November, 2019** by this Administrative Law Judge, that the Petition for Special Hearing for a waiver pursuant to Section 500.6, Part 125.2 Building Code, and Section 32-4-107(a) of the BCC to permit a replacement attached garage in a riverine flood plain be, and 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.

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

PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM:sln

JB
9-27-18

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**	*	BEFORE THE
(873 Ivy Hill Road)	*	OFFICE OF
8th Election District		
2nd Council District	*	ADMINISTRATIVE HEARINGS
George S. Nyquist, Jr.	*	FOR BALTIMORE COUNTY
Legal Owner		
Petitioner	*	**Case No. 2019-0031-SPHA**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of George S. Nyquist, Jr., legal owner ("Petitioner"). The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("BCZR") to permit a proposed tennis court to be constructed in a riverine floodplain. A petition for variance seeks to permit a proposed tennis court to be located in the front yard in lieu of the required rear yard placement. A site plan was marked and accepted into evidence as Petitioner's Exhibit 1.

George Nyquist, Jr. and Rick Richardson appeared in support of the requests. Two citizens attended the hearing to express concerns about flooding conditions in the area. The Petition was advertised and posted as required by the BCZR. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning ("DOP"), the Department of Environmental Protection and Sustainability ("DEPS") and the Department of Public Works ("DPW"). None of the reviewing agencies opposed the requests.

SPECIAL HEARING

Floodplain waiver requests are not "zoning" matters, although Baltimore County instructs owners to seek such waivers through the special hearing process under Section 500.7 of the

BCZR. I am apprehensive in reviewing these requests, which involve complex engineering principles and expertise. In addition, the myriad and byzantine flood plain regulations and codes under which such requests are to be analyzed are confusing and at times contradictory.

The Building Code states the general rule that "[n]o new buildings or additions shall be constructed in any riverine floodplain." Building Code, Part 125.1. Petitioner is not seeking to construct a building or addition in the floodplain. The County Code utilizes different terminology and provides that the "County may not (with two exceptions not applicable here) permit **development** in a riverine floodplain." BCC §32-4-414(c). It would seem this requires the petition to be denied, since "development" is a more comprehensive term than "buildings" and includes "any man-made change to improved or unimproved real estate including erection of buildings and other structures...grading, paving, clearing, excavation...." BCC § 32-8-101(g). But to further confuse matters the same regulations state that "all development in the floodplain area" requires a permit from the Building Engineer and shall be subject to other enumerated requirements. It seems impossible to reconcile these provisions.

The DPW submitted a ZAC comment indicating that agency did not oppose the flood plain waiver request. The Director of that agency indicated Mr. Richardson, a registered professional engineer, submitted a signed and sealed letter dated July 15, 2018 stating the project will have no impact upon the riverine flood plain. Mr. Richardson provided similar testimony at the hearing in this case.

Mike Stone, an adjoining neighbor, testified the area is subject to frequent flooding, and he indicated the private road and bridge used to access his and Petitioner's home has been washed out by flood waters several times in recent years. As discussed at the hearing, I too am concerned about the potential for flooding in this area. But both the DPW and Mr. Richardson

have opined the tennis court will not have a negative impact upon the flood plain, and without any expert or technical testimony to the contrary I believe the request should be granted. I will incorporate in the final order below the ZAC comment submitted by the DPW to ensure that prior to issuance of any permits the necessary environmental and technical reviews are undertaken by State and local authorities.

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 large property has irregular dimensions and significant topographical features. Indeed, based on a review of the site plan it appears the only available location for the tennis court (or any accessory structure for that matter) would be the front yard of the dwelling. As such the property is unique. If the Regulations were strictly interpreted Petitioner would experience a practical difficulty because he would be unable to construct the proposed tennis court. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare.

THEREFORE, IT IS ORDERED this **1st** day of **October, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to Section 500.7 of the BCZR for a waiver under Part 125 of the Baltimore County Building Code and Article 32 of the Baltimore County Code to construct a proposed tennis court in a riverine floodplain, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance to permit a proposed tennis court to be located in the front yard in lieu of the required rear yard placement, be and 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 his 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 Petitioner must comply with the DOP, DEPS and the DPW ZAC comments, copies of which are 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.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln

4-21

RECEIVED
AUG 28 2018
OFFICE OF
ADMINISTRATIVE HEARINGS

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: August 28, 2018

SUBJECT: DEPS Comment for Zoning Item # 2019-0031-SPHA
Address 873 Ivy Hill Road
(Nyquist, Jr. Property)

Zoning Advisory Committee Meeting of **August 13, 2018.**

__X__ The Environmental Impact Review (EIR) staff of EPS offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code). The zoning petition site plan shows construction to occur in FEMA 100-year floodplain. Therefore, EIR staff will review the proposal in conjunction with County Department of Public Works staff. Please note that this project will also require waterway construction authorization through the State of Maryland, Department of the Environment.

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code). This project may qualify for an exemption in accordance with §33-6-104(b)(10) of the Code.

Reviewer: Michal S. Kulis, EIR

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4-21

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 8/29/2018

FROM: Andrea Van Arsdale
Director, Department of Planning

RECEIVED
AUG 30 2018
OFFICE OF
ADMINISTRATIVE HEARINGS

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 19-031

INFORMATION:
Property Address: 873 Ivy Hill Road
Petitioner: George S. Nyguist, Jr.
Zoning: RC 4
Requested Action: Special Exception, Variance

The Department of Planning has reviewed the petition for a special hearing to determine whether or not the Administrative Law Judge should approve a waiver to permit a tennis court within a riverine floodplain.

A site visit was conducted on August 6, 2018.

The Sustainable Environment Chapter contained in the Baltimore County Master Plan 2020 stresses the protection of the County's water resources by limiting point source pollution, maintaining the integrity of the stream systems and limiting the impacts of storm water runoff. The Department will defer to the recommendations of the Department of Environmental Protection and Sustainability and the decision of the Administrative Law Judge as to whether or not the grant of a waiver is appropriate in this case.

In the event a waiver is granted, the Department recommends the petitioner plant trees and shrubs to screen the view of the tennis court from the dwelling at 869 Ivy Hill Road. Consistent with its location in a rural area it is also recommended that there be no lighting of the proposed tennis court.

For further information concerning the matters stated herein, please contact Wally Lippincott at 410-887-3480.

Prepared by:

Lloyd T. Moxley

Division Chief:

Jennifer G. Nugent

AVA/JGN/LTM/
c: Wally Lippincott
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Patrick C. Richardson, Richardson Engineering
Office of the Administrative Hearings
People's Counsel for Baltimore County

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BALTIMORE COUNTY, MARYLAND

INTER OFFICE CORRESPONDENCE

TO: Arnold Jablon,
Deputy Administrative Officer and
Director, Department of Permits, Approvals and Inspections

ATTN: Kristen Lewis
MS 1105

FROM: Steven A. Walsh, Director SAW
Department of Public Works

DATE: August 16, 2018

SUBJECT: Case No: 2019-0031-SPHA
873 Ivy Hill Road, Cockeysville, Maryland 21030

The subject case is to determine whether or not the Administrative Law Judge should approve a Special Hearing and Variance to permit a proposed tennis court to be located in a riverine flood plain and to permit a proposed tennis court to be located in the front yard in lieu of the required rear yard placement.

During the review of this property the Department of Public Works has found that there is a riverine flood plain, Beaver Dam Run, on the property that impacts the proposed development. The riverine flood plain is shown on Flood Insurance Rate Map, FIRM, 2400100235F dated September 26, 2008. The property is in Zone A and Zone X unshaded.

The Scope of the Administrative Variance must be expanded to include:

1.) A waiver to Baltimore County Code Section 32-4-414 and Baltimore County Building Code Part 125 must be obtained from the Administrative Law Judge.

The Department of Public Works takes no exception to the petition based on the following:

1.) The attached letter dated July 15, 2018 signed and sealed by Patrick C. Richardson, Jr., a Maryland Professional Engineer, and states that the proposed development will have no impact on the riverine flood plain.
2.) The following condition must be met: A Waterway Construction Permit from the Maryland Department of the Environment, MDE, must be obtained and submitted to the Department of Public Works before approval of Special Hearing. All costs and permits are the responsibility of the property owner. The property owner may contact Mr. Phatta Thapa at (410) 537-3641 or phatta.thapa@maryland.gov.

SAW/TWC/s

CC: Vishnubhai K. Desai, Chief, Development Plans Review and Building Plan Review
Kevin G. Wagner, Maryland Department of the Environment
Phatta Thapa, Maryland Department of Environment
Peter M. Zimmerman, People's Council