



## Board of Appeals of Baltimore County

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October 22, 2015

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Carole S. DeMilio, Esquire  
Office of People's Counsel  
The Jefferson Building, Suite 204  
105 W. Chesapeake Avenue  
Towson, Maryland 21204

RE: *In the Matter of: Michael P. Smith, Personal Representative  
(Estate of Myles R. McComas)*  
Case No.: 15-208-SPH

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review** filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington  
Administrator

KLC/tam  
Enclosure  
Duplicate Original Cover Letter

c: Michael P. Smith, Personal Representative of the Estate of Myles R. McComas  
Kenneth Wells/kjWells, Inc.  
Jim Jung  
Lawrence M. Stahl, Managing Administrative Law Judge  
Arnold Jablon, Director/PAI  
Andrea Van Arsdale, Director/Department of Planning  
Nancy C. West, Assistant County Attorney  
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF

Michael P. Smith, Personal  
Representative  
(Estate of Myles R. McComas)  
17318 Falls Road,  
Petitioner

5th Election District  
3rd Councilmanic District

Re: Petition for Special Hearing

\* BEFORE THE  
\* BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\*  
\* Case No.: 15-208-SPH

\* \* \* \* \*

OPINION

This case comes to the Board on appeal of the decision of the Administrative Law Judge (“ALJ”) granting with restrictions a Petition for Special Hearing seeking relief pursuant to Baltimore County Zoning Regulations (“BCZR”) § 500.7 and subsequently denying a Motion for Reconsideration of that decision. The Special Hearing requested confirmation of certain prior and proposed inter-family conveyances (subdivision) of a parcel split zoned BL-CR and RC 2 and to confirm the rights of subdivision (density) associated therewith. Also requested is the granting of an exemption from the County’s subdivision regulations for future residential development on the property pursuant to Baltimore County Code (“BCC”) § 32-4-106(a)(iv).

Appearing at the de novo hearing held by the Board on October 7, 2015 for this matter was Lawrence E. Schmidt, Esquire of Smith, Gildea, and Schmidt, counsel for the Petitioner, namely, Michael P. Smith, Personal Representative of the Estate of Myles R.

McComas. Also appearing was Carole DeMilio, Esquire, Deputy People's Counsel for Baltimore County. There were no other interested persons present. As will be detailed hereinafter, counsel for the Petitioner and People's Counsel jointly proffered the undisputed facts germane to the issues in this case and also advised that they were in agreement as to a proposed decision of the Board. The decision which follows is in accordance with the proffered evidence and the parties' agreement.

### Factual Background

The property at issue in this case is an irregularly shaped parcel of land located adjacent to the intersection of Mt. Carmel Road and Falls Road in northern Baltimore County. The property is approximately 20.2± acres in total area and is predominantly zoned RC 2 (18.5± acres), but a small portion is zoned BL-CR (1.7± acres). The property is bisected by Falls Road (MD Route 25) so that there is effectively an eastern piece of the overall tract (8.5± acres) and a western piece (11.7± acres).

The relevant genesis of the history of the title of this property dates to 1888, when John Hale held title to 53 acres which included the entire subject tract. Between 1891 and 1919, Hale conveyed 4 separate parcels (the deeds for these conveyances are in the Board's case file and were accepted below as evidence to the ALJ) comprising approximately 12 acres from the original tract.<sup>1</sup> Following John Hale's death in or about 1965, his son, Clarence Hale held title. Later that year, Clarence Hale conveyed the tract, as it then existed, to Myles R. McComas and Rachel McComas, his wife. In 1970, Mr.

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<sup>1</sup> All of the documents accepted by the ALJ were also accepted as evidence by the Board at the de novo hearing.

and Mrs. McComas conveyed approximately 10 acres to the Board of Education of Baltimore County for the construction of a public school. These conveyances resulted in the tract as configured and shown on the site plan as of November 25, 1979, the effective date of the adoption of the RC 2 zone in the BCZR. As is well settled, this is the relevant date for determining "lots of record", as defined in BCZR § 101.1, and computing the rights of density/subdivision associated therewith.

If considered a single tract (as alleged by People's Counsel and disputed by the Petitioner), the tract as configured as of November 25, 1979 would yield two density units. That is, the property could be divided once to create two building lots. This is because, pursuant to BCZR § 1A01.3.B.1, any lot of record between two and one hundred acres in area may be subdivided once.

In any event, continuing the chronology, in 1987 and 1988 (through two separate transactions that were apparently done for tax purposes) the senior McComas' conveyed approximately 9.25 acres to their son, Myles Jr., and his wife, their daughter-in-law, Janney McComas, for the purpose of constructing a single family dwelling. This conveyance was not approved via the subdivision review process under Baltimore County law, rather, was accomplished by deed between the parents and son/daughter-in-law. The parties agree, and the Board so finds, that this conveyance is hereby legitimized and that it conveyed one density unit to Myles Jr and his wife Janney. This density unit was indeed utilized when Myles Jr. and Janney constructed a dwelling on the 9.25 acre lot. Janney McComas currently resides on that property following the untimely death of her husband, Myles Jr. Later, apparently in order to accommodate a

driveway to Myles Jr. and Janney's house, the senior McComas' conveyed in 1989 a triangular shaped 1.7 acre parcel from the original tract in order to provide access (driveway) to Myles Jr. and Janney's newly constructed home. This conveyance was also not approved/reviewed by Baltimore County. Again, however, the parties agree and the Board so finds that the conveyance was "non density" in nature and that the parties did not intend on conveying any density or building rights. By this decision, the conveyance is hereby legitimized.

Following these two conveyances to their son and daughter-in-law, the property became configured as it is today. As noted above, it is 20.2± acres in area. Rachel McComas preceded her husband in death and Myles R. McComas Sr. died in 2014. Pursuant to the provisions of his Last Will and Testament, he bequeathed the eastern piece of the property to his son, Michael McComas. Moreover, his Last Will and Testament provided that the western portion of the property be distributed to the three surviving children of Myles Jr (the grandchildren of Myles McComas Sr.). It is these bequests which generate the instant petition.

The question presented in the instant Petition for Special Hearing is "what rights of subdivision/density are available to the tract?" As noted above, People's Counsel avers that there is but a single density remaining in the RC 2 acreage, as the tract is but a single parcel, is between 2 and 100 acres and one density unit was previously conveyed to Myles Jr. and Janney. People's Counsel maintains that pursuant to BCZR 1A01.3.B.1 Falls Road does not divide the tract into two separate lots, regardless of when or how the road was created. The Petitioner offers a different theory. Through counsel, the

Estate of Myles R. McComas Sr. avers that Falls Road effectively subdivided the property into two pieces (east and west) and that each piece is a separate lot for the purposes of determining density. In the Estate's view, there are two density units attributable to the eastern piece and one density unit remaining on the westerly piece. People's Counsel opposes this interpretation.

Based on the proffer of the parties and the facts herein, we find that one density unit should be assigned to the 8.5 +/- acres on the eastside of Falls Road, which is presently vacant and bequeathed to Michael McComas. Thus, Mr. McComas has the right to develop that property with one single family dwelling. As to the westerly piece, we note that it is already improved with several buildings. These include a commercial structure, a barn and a single family detached principal dwelling. These improvements are all in the BL-CR zoned portion of the tract. The RC 2 zoned portion is not improved. Moreover, it is undisputed that these improvements have existed on the property for many years, prior to the adoption of the RC 2 zone in 1979 and possibly before the adoption of any zoning in Baltimore County in 1945. Under these circumstances, we find that the westerly piece therefore has one density unit presently existing, on the BL-CR portion. In light of the special facts arising in this particular case, we shall not prohibit here the utilization of that existing density unit anywhere, on the 11.7 +/- acres on the west side of Falls Road, either in the RC 2 or BL-CR zone. Thus we find that the western parcel may also have one principal dwelling. It can be in the form of the existing dwelling in the BL-CR zone, or, could be utilized elsewhere on the 11.7 +/- acres of the west side of Falls Road. We hold that the 20.2 +/- tract herein can sustain no

more than three principal dwellings - the existing one on Myles Jr. and Janney's property, a dwelling on the property bequeathed to Michael (east) and either the existing principal dwelling (or replacement therefore) on the property bequeathed to the grandchildren (west). As noted above, under the circumstances of this case, we find this resolution fair and equitable.

Lastly, the Petitioner presents a final question, which we will also address. As noted above, we hereby legitimize the prior conveyances from Mr. and Mrs. McComas Sr. to their son Myles Jr. and his wife, Janney. Insofar as the proposed distribution of this property under the Last Will and Testament of Myles Sr., we find that it is not subject to the development review process. We note the provisions of Baltimore County Code § 32-4-106(a)(iv) which provides the subdivision of land pursuant to a Last Will and Testament is exempt from the County's development review regulations. Although this issue is typically addressed by the County DRC (Development Review Committee), its decisions are appealable to this Board and we have jurisdiction over this determination. In the interest of judicial economy and to address all relevant issues, we therefore make this determination. Clearly, BCC 32-4-106 (a)(iv) applies here. Thus, upon their respective acquisitions (by deed executed by Personal Representative of the Estate) Michael McComas may apply for a building permit to construct a single family dwelling on his acquired property. Similarly, the grandchildren may do the same should they decide to "relocate" the density unit that exists on their property and build a single dwelling elsewhere on the property. There is no subdivision review (neither a minor subdivision, major subdivision and/or lot line adjustment) required in view of

this exemption. The owners need only apply and obtain the requisite building permit (conditional or compliance with all requirements applicable thereto) as the conveyance under Mr. McComas' Last Will & Testament is exempt from the subdivision review process.

ORDER

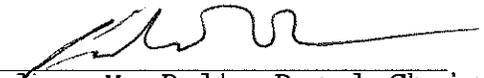
THEREFORE, IT IS THIS 22<sup>nd</sup> day of October, 2015, by the Board of Appeals of Baltimore County,

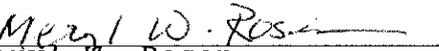
ORDERED that

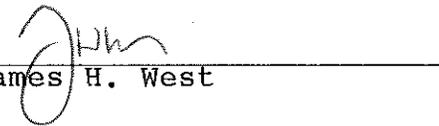
1. The conveyance to Myles and Janney McComas of 9.25± acres under Deeds dated December 30, 1987 and January 5, 1988 and recorded at Liber 7760, Folio 815 and Liber 7763, Folio 030 represented the conveyance of one density unit from the overall tract and is hereby approved; and
2. The conveyance to Myles and Janney McComas of 1.7± acres under Deed dated June 1, 1989 and recorded at Liber 8437, Folio 576 was a non density transfer and is hereby approved; and
3. That property hereinabove described as the eastern piece and to be bequeathed and conveyed to Michael McComas may be developed with one principal dwelling and that the property hereinabove described as the western piece and to be bequeathed and conveyed to grandchildren of Myles R. McComas, Sr., may be developed with one principal dwelling; and

4. That the conveyances from the Estate of Myles R. McComas to Michael McComas and the grandchildren of Myles R. McComas as described hereinabove are exempt from the subdivision review process per BCC § 32-4-106(a)(iv).

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

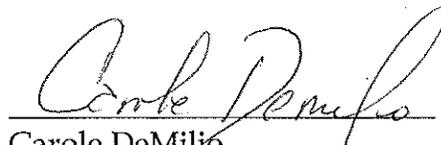
  
Andrew M. Belt, Panel Chair

  
Meryl W. Rosen

  
James H. West

**APPROVED AS TO CONTENT AND FORM.**

  
Lawrence E. Schmidt  
Attorney for Estate of Myles R. McComas

  
Carole DeMilio  
Attorney for People's Counsel of Baltimore County