

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
E side of Falls Road; 2500 feet NW of		
Brick Store Road	*	DEPUTY ZONING
5 th Election District		
3 rd Councilmanic District	*	COMMISSIONER
(18426 Falls Road)		
	*	FOR BALTIMORE COUNTY
Robert Boutwell		
<i>Petitioner</i>	*	
Carl F. Parker		
<i>Contract Purchaser</i>	*	CASE NO. 2010-0082-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Robert Boutwell, the legal property owner, and Carl F. Parker, the contract purchaser. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

1. To permit a non-density transfer of 0.13 acre from tract 5 zoned R.C.2 to tract 2 zoned R.C.2, which would place the well on the same parcel as the dwelling it serves; and
2. To permit a non-density transfer of 0.04 acre from tract 4 zoned R.C.2 to that portion of tract 1 zoned R.C.2, in order to create a 24 foot wide in-fee access strip to a public road from tract 1; and
3. To permit a non-density transfer of 0.44 acre from tract 2 zoned R.C.2 to that portion of tract 1 zoned R.C.2 in order to create a 24 foot wide in-fee access strip to a public road from tract 1; and
4. To permit a non-density transfer of 0.53 acre from tract 5 zoned R.C.2 to that portion of tract 1 zoned R.C.2 in order to create a 24 foot wide in-fee access strip to a public road from tract 1; and
5. To permit a non-density transfer of 0.53 acre from tract 5 zoned R.C.2 to tract 2 zoned R.C.2 to create a 24 foot wide in-fee access strip to a public road from tract 2; and
6. To approve the continued existence of agricultural buildings on 8.13 acres of tract 1 zoned R.C.2 and 9.57 acres of tract 1 zoned R.C.8 without a principal structure; and

7. To create a non-density/non-buildable lot of 2.04 acres in that portion of tract 3 zoned R.C.2; and
8. To permit an amendment to the plan that accompanied the zoning petition approved in Case No. 98-348-SPHX; and
9. For such other and further relief as may be required by the Zoning Commissioner.

The subject property and requested relief are described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1, and more specifically the redlined site plan that was marked and accepted into evidence as Petitioner's Exhibit 2.

The case first came before the undersigned for the requisite public hearing on November 16, 2009. At that time, Carl and Dawn Parker, the contract purchasers, appeared with their attorney, J. Neil Lanzi, Esquire, and their licensed property line surveyor, Kenneth Wells with kjWells, Inc. Also appearing was the property owner, Robert Boutwell, and his son, Gregory Boutwell. Appearing in opposition to the requested relief were several nearby neighbors that included Patricia Shook of 18613 Falls Road and Mary Zodhiates of 4001 and 4209 Beckleysville Road, and her attorney, G. Macy Nelson, Esquire.

At that time, Mr. Lanzi requested a continuance because he believed that the case would need more time than the one hour allotted for the hearing, as well as the fact that he had just received the comment from the Office of Planning indicating that the panhandle length for proposed Lot 2, which is the subject lot, exceeds 1,000 feet and therefore would require a variance. Mr. Lanzi indicated he did not expect this comment from Planning, having discussed this issue with that office previously. Hence, Mr. Lanzi thought it would be necessary to have a postponement so he could revisit this issue with the Planning Office. He also indicated that the property owner, Mr. Boutwell, was present but he had not spoken with him or had the opportunity to know what his participation, if any, would involve, and was also of the understanding that Mr.

Boutwell was represented by counsel, Jeffrey Gray, Esquire. Mr. Nelson indicated that he had spoken with his client, Ms. Zodiates, and that she wished to go forward and opposed the postponement request.

The undersigned granted the postponement request; however, in the interest of fairness I offered Ms. Shook the opportunity to testify in the event she was unable to attend the next hearing date. She did in fact testify and echoed many of the assertions that were made in her letter dated November 9, 2009, which was marked and accepted into evidence as Protestant's Exhibit 1. There was also a related letter from Edward and Dorothy Yingling of 18609 Falls Road, that was very similar to Ms. Shook's letter, and which was marked and accepted into evidence as Protestant's Exhibit 2. In her testimony, Ms. Shook pointed out that the subject property is zoned R.C.2 and R.C.8, which emphasizes watershed and agricultural uses and area. She does not desire to have any more buildings or lots created. She also references the property's proximity to the Pretty Boy Reservoir and believes that even one additional lot would have a detrimental effect on the area, in particular with wells, drainage issues and wildlife preservation. She also testified that this request would impact traffic because the creation of one more lot and access to Falls Road via a panhandle would make Falls Road, which is already very congested, even more so. In short, she does not believe there should be any exceptions or variances to allow this additional development. On cross-examination, Ms. Shook indicated that she has lived at her property consisting of approximately two acres since 2001. She is located west of the Boutwell property and can see one of the homes on the Boutwell property, and does not want a use in common driveway even though she cannot see it. The hearing was then continued and rescheduled.

Appearing at the hearing on February 17, 2010 in support of the requested special hearing relief were Petitioners Carl Parker and Dawn Parker, the contract purchasers, their attorney, J. Neil

Lanzi, Esquire, and Kenneth Wells with kjWells, Inc., the licensed property line surveyor who prepared the site plan. Also appearing in support of the requested relief was Jeffrey H. Gray, Esquire, attorney for the property owner, Robert Boutwell. Appearing in opposition to the requested relief was Mary Zodhiates of 4209 Beckleystown Road.

Testimony and evidence offered revealed that the overall property owned by Mr. Boutwell and/or his family once consisted of approximately 92.59 acres zoned R.C.2 and R.C.4. The property was comprised of a number of individual tracts and parcels located on the east side of Falls Road, north of Brick Store Road and south of Beckleystown Road, in the Beckleystown area of northwestern Baltimore County. The property now consists of approximately 60 acres zoned R.C.2 and R.C.8 and is irregular-shaped.¹ In order to give some context to the instant request for special hearing relief, a brief review of the property's zoning history is instructive.

Mr. Boutwell's property came before this Commission in 1998 as Petitions for Special Hearing and Special Exception. According to the testimony and evidence presented to then-Zoning Commissioner Lawrence E. Schmidt, the Boutwells acquired their 92.59 acres piecemeal over a period of years from October 1943 through September 1971. Subsequently, the Boutwells made a series of conveyances of portions of their property. This included an outconveyance to the Thompson family in 1984 and an outconveyance to the Wilson family in 1985. At the hearing in 1998, the Boutwells sought to reconfigure and re-subdivide their remaining holdings consisting of approximately 60 acres.

One of the main issues concerning the relief sought at that time involved a determination of the density available on the property. Following the 1998 hearing, John Lewis with the Zoning Review Office undertook a lengthy examination of the devolution of title for the Boutwell

¹ The R.C.4 portion of the property was subsequently rezoned to R.C.8, although the number of available density units did not change. The overall density remains the same.

property and provided a summary of the conveyances and their impact on the density rights associated with the Boutwell property. In addition, the Boutwells submitted a site plan detailing the previous conveyances and the density rights associated with the variance tracts and parcels. Of particular importance, Commissioner Schmidt concluded that the remainder of the Boutwell property contained nine (9) density units and made this and other findings in his Order dated October 1, 2003 in Case No. 98-348-SPHX.

The Boutwell property as it is today is reflected on the present redlined site plan that was accepted into evidence as Petitioner's Exhibit 2, and the prior site plan that accompanied the previous zoning Petition with the density calculations is shown in the upper left corner of the redlined site plan. At this juncture, Petitioners Carl and Dawn Parker, the contract purchasers of proposed Lot 2, and Mr. Boutwell, the legal owner, are requesting special hearing relief to approve the non-density transfers as described above. Although the Boutwell property has available density, the non-density transfers are needed to alleviate conditions that existed when the 1998 case was heard, but were not specifically addressed at that time. Chief among these for Mr. and Mrs. Parker is access to their proposed lot from Falls Road.

While the requests for non-density transfers appears somewhat complicated, Mr. Wells, Petitioner's land use consultant, indicated in his testimony that the requests are really rather minimal and straightforward. He also provided a visual representation with the photographs that were marked and accepted into evidence as Petitioner's Exhibits 3A through 3O. As depicted in the photographs and labeled and shown on the redlined site plan, the subject property has access via a driveway from Falls Road. The driveway runs along the northern portion of Tract 5, continues along the northern portion of Tract 2 where it splits, with part of the driveway running along the northern portion of Tract 4 and the other part continuing to Tract 1 (and Petitioner's

proposed Lot 2) and through the middle of Tract 2. The crosshatched areas shown on the redlined site plan are the locations of the proposed non-density transfers. If permitted, Petitioner's proposed Lot 2 would gain in-fee access to Falls Road, as would Tract 2. As minor housekeeping matters to approve existing conditions, Mr. Boutwell also seeks a non-density transfer of a small portion of Tract 5 (0.13 acre) to Tract 2 in order to place the existing well for Tract 2 on the same parcel as the dwelling it serves; to legitimize the continued existence of agricultural buildings on 8.13 acres of Tract 1 zoned R.C.2 and 9.57 acres of Tract 1 zoned R.C.8 without a principal structure; and to create a non-density/non-buildable lot of 2.04 acres on the portion of Tract 3 zoned R.C.2.

Testifying in opposition to the requested relief was Mary Zodhiates of 4209 Beckleysville Road. Ms. Zodhiates owns substantial acreage north of the Boutwell property. She is very concerned about overdevelopment in this area. Ms. Zodhiates asserted that the law does not permit non-density transfers or lot line adjustments which result in more subdivisions of the property. She also indicated that it was contrary to the conservation goals of the R.C. Zone to approve the requested relief and essentially permit what is now an unbuildable lot to become buildable. She also indicated that under Section 1A00.4.B of the Zoning Commissioner's Policy Manual (Z.C.P.M.) entitled "Sale or Transfer of Small Parcels," the requested transfers in the instant matter are permitted only if the number of lots does not increase and the end result does not increase density. Finally, Ms. Zodhiates testified that she believes the in-fee access strips that would be created by the transfers do result in a panhandle access to proposed Lot 2 that exceeds the permitted 1,000 feet in length.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. A revised comment received from the Office of Planning dated February 16,

2010 indicates that Office does not oppose the special hearing requests. General comments received from the Department of Environmental Protection and Resource Management (DEPRM) dated November 3, 2009 indicates that development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains and with the Forest Conservation Regulations. In particular, Tom Panzarella with the Environmental Impact Review Section indicates that a Forest Conservation Plan has not been submitted to DEPRM for review; therefore, the Forest Conservation Easements and Forest Buffer Easements shown on the plan have not been approved (the forest buffers have been approved by a Steep Slopes and Erodible Soils analysis). DEPRM comments above pertain to any future development of the property when more detailed information will be required, per DEPRM comments on the minor subdivision review dated January 23, 2007. In addition, Wallace S. Lippincott with the Agricultural Preservation Section of DEPRM indicates that this farm has been divided up into numerous pieces. The question is whether there is any agricultural basis to support the retention of the “agricultural buildings” or the trailer.

Based on the testimony and evidence as the hearing, I am persuaded to grant the special hearing relief. As was confirmed by then-Zoning Commissioner Schmidt in his Order dated October 1, 2004, the remaining tracts and parcels that comprise the Boutwell property contain nine (9) density units. As shown on the redlined site plan, one of those units would be utilized by Mr. and Mrs. Parker as proposed Lot 2, with much of that lot being preserved as a Forest Buffer Easement and Forest Conservation Easement, as well as the creation of a non-density and non-buildable area. Mr. Parker testified that he has known Mr. Boutwell for a number of years and had been interested in this property for about five years. With Mr. Boutwell’s permission, Mr. Parker has maintained the existing driveway access to the property and has placed the well in anticipation

of hopefully purchasing it in the near future. One important issue not addressed in the 1998 case was access to the interior site, including what is now proposed Lot 2. Petitioners desire to alleviate this condition with the aforementioned non-density transfers.

In opposition to the requested relief, Ms. Zodiates argues that the non-density transfers should not be permitted based on her reading of the Zoning Commissioner's Policy Manual; however, I believe her interpretation is misplaced in this case. The section to which she refers, Section 1A00.4.b of the Z.C.P.M., states that the sale or transfer of small R.C. zoned parcels may be permitted for non-density purposes such as access or agricultural use. It also states that a parcel could be transferred from an overall development tract to an adjacent existing lot of record provided that the end result does not permit a re-subdivision into a greater number of lots, and indicates that a special hearing may be required to determine if a particular non-density transfer is permitted.

In my judgment, the requested non-density transfers are appropriate. It is important to note that this case is not about density. That issue was already determined by former Commissioner Schmidt, who determined there were nine (9) available density units. Mr. Parker's desired purchase of a portion of one of the tracts of the Boutwell property does not create additional density. It merely utilizes one of the available density units; however, in order for Mr. Parker's proposed Lot 2 to be accessed by a public street, Petitioners are in need of the aforementioned relief in order to acquire in-fee access to Falls Road. Section 1A00.4.b of the Z.C.P.M. permits a non-density transfer for such a purpose. Moreover, in my view, the development of proposed Lot 2 will not have a negative impact on adjacent properties, nor will it be detrimental to the health, safety, or general welfare of the community. Single-family dwellings are permitted as of right in the R.C.2 and R.C.8 Zones and the development of proposed Lot 2 will not be inconsistent with

those zoning classifications. I am also persuaded to permit the non-density transfer in order to place the well that serves Tract 2 on the same parcel. Finally, I shall permit the continued existence of agricultural buildings on Tract 1 without a principal structure. The evidence indicates that these structures have been on the property for a number of years and the photographs indicate that much of the property continues to be used for agriculture, as evidenced by the rows of cornfields as well as other plowed fields on the property.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's requests for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 24th day of March, 2010 that Petitioner's request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) as follows:

1. To permit a non-density transfer of 0.13 acre from tract 5 zoned R.C.2 to tract 2 zoned R.C.2, which would place the well on the same parcel as the dwelling it serves; and
2. To permit a non-density transfer of 0.04 acre from tract 4 zoned R.C.2 to that portion of tract 1 zoned R.C.2, in order to create a 24 foot wide in-free access strip to a public road from tract 1; and
3. To permit a non-density transfer of 0.44 acre from tract 2 zoned R.C.2 to that portion of tract 1 zoned R.C.2 in order to create a 24 foot wide in-fee access strip to a public road from tract 1; and
4. To permit a non-density transfer of 0.53 acre from tract 5 zoned R.C.2 to that portion of tract 1 zoned R.C.2 in order to create a 24 foot wide in-fee access strip to a public road from tract 1; and
5. To permit a non-density transfer of 0.53 acre from tract 5 zoned R.C.2 to tract 2 zoned R.C.2 to create a 24 foot wide in-fee access strip to a public road from tract 2; and
6. To approve the continued existence of agricultural buildings on 8.13 acres of tract 1 zoned R.C.2 and 9.57 acres of tract 1 zoned R.C.8 without a principal structure; and

7. To create a non-density/non-buildable lot of 2.04 acres in that portion of tract 3 zoned R.C.2; and
8. To permit an amendment to the plan that accompanied the zoning petition approved in Case No. 98-348-SPHX,

be and are hereby **GRANTED**, subject to the following:

1. Petitioners may apply for permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
3. 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).
4. Petitioners shall comply with the requirements of the Development Review Committee concerning lot line adjustments under Section 32-4-106(a)(1)(viii).

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz