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| <b>IN RE: PETITION FOR SPECIAL HEARING</b> | * | BEFORE THE                    |
| N side of East Ruhl Road, 270' E of        |   |                               |
| Ruhl Road                                  | * | OFFICE OF ADMINISTRATIVE      |
| 6 <sup>th</sup> Election District          |   |                               |
| 3 <sup>rd</sup> Councilmanic District      | * | HEARINGS FOR                  |
| <b>(2464 East Ruhl Road)</b>               |   |                               |
|  | * | BALTIMORE COUNTY              |
| Robert L. and Noreen M. Alban              |   |                               |
| Petitioners                                | * | <b>CASE NO. 2011-0368-SPH</b> |

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**OPINION AND ORDER**

This matter comes before this Administrative Law Judge for consideration of a Petition for Special Hearing filed by Robert L. and Noreen M. Alban, legal owners of the subject property. As originally filed, the Petition for Special Hearing was filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve a non-density transfer of 4.9 acres from the property of Alban (2464 East Ruhl Road) to the property of McCullough (21327 North Ruhl Road).<sup>1</sup> The subject property and requested relief are more fully described on the revised site plan, which was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing on this Petition were Robert Alban, legal owner, Richard McCullough, the transferee of the property, and Bruce E. Doak, a consultant and Property Line Surveyor with Gerhold, Cross & Etzel, Ltd., who prepared the site plan for this property. The file reveals that the Petition was properly advertised and the site was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other citizens present. Dave Lykens appeared on behalf of the Department of Environmental Protection and Sustainability.

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<sup>1</sup> As a result of the Zoning Advisory Committee (ZAC) comment received August 8, 2011, the relief requested was revised from 4.9 acres to 4.3 acres.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Sustainability (DEPS) received August 8, 2011, which indicate as follows:

- “1. The dwelling located at 2464 East Ruhl Road (Alban Property) is served by a developed spring water supply and a sewage disposal system which has been confirmed to be failing, discharging sewage to the Little Falls via an underground private storm drain pipe system traversing the property. Soil percolation tests were conducted on the 4.9 acre tract of land to be transferred to the McCullough property to identify a sewage disposal area to serve Mr. Alban’s dwelling located at 2464 East Ruhl Road. The test results are favorable. The Groundwater Management section of the DEPS recommends that the area to be transferred from the Alban Property to the McCullough property be reduced to 4.3 acres as shown in the attached plan in order to provide an acceptable sewage disposal area and a repair area to serve the house at 2464 East Ruhl Road (Alban Property). Also, GWM requests that, as a condition of the Lot Line Adjustment, the owners of 2464 East Ruhl Road install a new sewage disposal system on the property prior to the recordation of the new lots.
2. The existing dwellings located at 21327 North Ruhl Road (McCullough Property) are served by individual well supplies and sewage disposal systems. Inspection of the wells and sewage disposal systems find all are functioning properly at this time.
3. The Agricultural Preservation section supports this request as the owner of the property acquiring the new acreage has indicated the purpose is for farming. Agricultural Preservation section would like to request that the zoning order specify that the transferred area of 4.9 acres can not be used for construction of a dwelling or used to support a dwelling (ie. Well, septic or stormwater management facility for a dwelling).”

Testimony and evidence presented demonstrated that the property which is the subject of this special hearing request, consists of 9.1 acres, more or less, and is zoned RC 2. This property is owned by Robert L. and Noreen M. Alban. The Albans are interested in conveying as a non-density transfer 4.3 acres of their land unto their adjacent property owner and neighbor, Richard McCullough. At the present time, Mr. McCullough owns 2.7 acres and lives within the dwelling located on that land. He is interested in acquiring the 4.3 acres from his neighbor, Mr. Alban, and adding it to his 2.7 acres. The purpose of the transfer is for agricultural reasons and overall density

will not be affected in that both lots will have one additional right of subdivision. However, it should be noted that the 4.3 acre parcel which is the subject of this non-density transfer shall in no way be improved with a single family dwelling. That 4.3 acre area of land shall remain in open farm use.

The applicants submitted into evidence letters of support from nearby proper owners, namely Howard Turnbaugh, Sr. and Willard and Diana Elder. Those letters of support were submitted into evidence as Petitioners' Exhibit 4A and 4B. In addition, the request was reviewed by Baltimore County reviewing agencies who support the request; however, it should be noted that the Department of Environmental Protection and Sustainability (DEPS) has requested certain conditions of approval which will be imposed at the end of this Order.

As to the special hearing relief, I find that the non-density transfer of the 4.3 acres from Mr. and Mrs. Alban to Richard McCullough can be approved without any detrimental impact on the surrounding community or surrounding properties. In addition, the transfer of this land will not affect the overall density of either the Alban property or the McCullough property. Therefore, the special hearing request shall be granted.

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

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 31<sup>st</sup> day of August, 2011, that the Petitioner's request for Special Hearing relief, filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to approve a non-density transfer of 4.3 acres from the property of Alban (2464 East Ruhl Road) to the property of McCullough (21327 North Ruhl Road), be and is hereby GRANTED, subject to the following:

1. Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the thirty (30) day Appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioners shall comply with the ZAC comment received from the Department of Environmental Protection and Sustainability dated August 8, 2011; a copy of which is 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.

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Signed  
TIMOTHY M. KOTROCO  
Administrative Law Judge  
for Baltimore County

Attachment

TMK/pz