

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
N/Side of Traceys Store Road, 1,800 feet		
N of Foreston Road	*	OFFICE OF ADMINISTRATIVE
5 th Election District		
3 rd Councilmanic District	*	HEARINGS FOR
(3030 Traceys Store Road)		
	*	BALTIMORE COUNTY
Ronald E. and Dennis L. Wilhelm		
<i>Petitioners</i>	*	CASE NO. 2011-0226-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for Baltimore County for consideration of a Petition for Special Hearing filed by the owners of the subject property, Ronald E. and Dennis L. Wilhelm. Petitioners request Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve the non-density transfers of 2.322 acres from Lot 1 to Lot 2 and 0.946 of an acre from Lot 1 to Lot 3. The subject property and requested relief are more fully depicted on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the public hearing in support of the special hearing request were Petitioner Ronald E. Wilhelm, one of the property owners, and Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan and who is assisting the Petitioners in the permit process. The file reveals that the Petition was properly advertised and the property was properly posted as required by the Baltimore County Zoning Regulations. There were no Protestants or other interested persons in attendance.

Testimony and evidence presented revealed that the aforementioned properties are located at the northeast side of Traceys Store Road, just north of Foreston Road in the Parkton area of northern Baltimore County, and zoned R.C.2 and R.C.8.

The Development Review Committee (DRC) decision [DRC #011811A] has been tabled pending the outcome of this hearing to allow non-density transfer of a 0.946 acre parcel and a 2.322 acre parcel to adjacent property owners.

Testimony was offered on behalf of Petitioners and revealed that Gerhold Cross & Etzel Ltd. had done a property line survey on behalf of the Petitioners and then, on behalf appeared before the DRC for the lot line adjustment. In mid January of 2011, they were verbally granted the approval for the adjustment, pending approval of the special hearing by the Administrative Law Judge.

Mr. Doak presented Exhibit 1 which was the Plat to Accompany the Request for Special Hearing. He redlined a correction, noting that after the adjustments, Lot 3 would contain 2.946 acres \pm as opposed to the 4.946 acres \pm that mistakenly appeared on the plat.

He related the history of the property. The entire area of Lots 1, 2, and 3 were originally purchased by Leonard and Aida Wilhelm, parents of the Petitioners. The original subdivision plat dated May 15, 1980 was presented as Petitioners' Exhibit 2. In 1980, the parents divided the property into three lots. They kept one lot and titled Lot 2 in the name of Ronald Wilhelm and Lot 3 in the name of Dennis Wilhelm. Both brothers built homes on their respective lots in 1981 and each has lived there for the past 30 years. In July, 2009, Mrs. Wilhelm, who had survived her husband, also died, leaving in the estate Lot 1 to both brothers. The request of the Petitioners to add 2.322 acres to Lot 2 and .096 acres to Lot 3, leaving 1.675 in Lot 1 represents their attempt to maintain the viability of the three lots while enlarging each of them. Since all three are zoned RC 2, Mr. Doak noted that the minimum acreage for a dwelling is 1 acre as well as setbacks of 35 feet from a residence to the property and 75 feet from the center of the road to the dwelling. He noted that in their requested new configuration, all three dwellings would meet those requirements. He

also stated that the surrounding land area around the homes is maintained by the Petitioners and will continue to be so. The house of the late parents on Lot 1 is presently the residence of the daughter of one of the brothers. That situation will also remain.

Pursuant to the DRC request, Petitioners contacted Mr. Robert Powell of the Department of Environmental Protection and Sustainability as the viability of the three lots. He was asked and did in fact certify that neither the septic nor the well water systems of any of the three residences would be affected in any way by the granting of the lot line request. The only loose end to be resolved was the granting of this special hearing request. There will be no other development of the property. In all other manner and form, the three houses and resultant lots will comply with all other applicable regulations.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated March 1, 2011 which indicates that they do not oppose the request for the non-density transfer provided that this will not create any additional building lots.

Considering all of the testimony and evidence presented, I am persuaded to grant the special hearing relief. I further find that the granting of the relief as set forth herein can be accomplished without injury to the public health, safety, and general welfare.

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

THEREFORE, IT IS ORDERED this 16th day of March, 2011 by this Administrative Law Judge that Petitioners' Special Hearing request from Section 500.7 of the Baltimore County

Zoning Regulations (“B.C.Z.R.”) to approve the non-density transfers of 2.322 acres from Lot 1 to Lot 2 and 0.946 of an acre from Lot 1 to Lot 3, be and is hereby GRANTED.

The relief granted herein shall be 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. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

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

Signed
LAWRENCE E. STAHL
Administrative Law Judge
for Baltimore County

LES:pz