

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
W/side of Spooks Hill Road; 1,710' NW	*	OFFICE OF ADMINISTRATIVE
of Rayville Road		
(18827 Spooks Hill Road)	*	HEARINGS FOR
6 th Election District		
3 rd Council District	*	BALTIMORE COUNTY
John Calhoun		
Petitioner	*	CASE NO. 2012-0207-SPHA

* * * * *

ORDER AND OPINION

This matter comes before the Office of Administrative Hearings (OAH) as Petitions for Special Hearing and Variance filed by the legal owner of the property, John Calhoun. The Petitioner is requesting Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- To abandon the special exception in Case No. 1949-1411-X approved for use as a social club (gun and hunting club);
- To permit the non-density transfer of a 3.869 acre parcel to an adjoining property owned by John L. Calhoun;
- To permit the non-density transfer of a 1.053 acre parcel to an adjoining property owned by John L. Calhoun, and
- To permit the non-density transfer of a 0.730 acre parcel to an adjoining property (18801 Spooks Hill Road) owned by John L. Calhoun.

The Petitioner also seeks variance relief from Section 1A01.3.B.3 of the B.C.Z.R., to permit a side yard setback of 0' in lieu of the required 35' on the original 1.017 acre parcel. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the public hearing held for this case was Petitioner John Calhoun and Bruce E. Doak with Gerhold, Cross & Etzel, Ltd., the registered professional land surveyors who

prepared the site plan. Jeffrey Livingston, with the Department of Environmental Protection and Sustainability, attended the hearing and testified as to certain concerns identified by his agency. 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 interested persons in attendance, and the file does not contain any letters of opposition or protest.

The Zoning Advisory Committee (ZAC) comments were received and made a part of the file. There were no ZAC comments received from any of the County reviewing agencies.

Testimony and evidence revealed that the subject property is zoned RC 2, and in the aggregate contains over 50 acres. The land has been owned by Petitioner's family for many years, and 1 acre lots were created in 1954 and 1955. The property is bounded on three sides by Prettyboy Reservoir, and is approximately 60-70% wooded. Petitioner indicated he wanted to complete the non-density transfers to "clean up" the configuration and layout of the existing lots. Specifically, Petitioner desires to create one large lot (approximately six acres) by transferring two parcels into the existing 1.017 acre lot on the east side of Spooks Hill Road. Petitioner desires to transfer the 0.730 acre parcel into the existing 1.000 acre lot (which contains a single story dwelling) to provide a "buffer" of sorts between that dwelling and the farm fields adjacent thereto, so that corn or other crops are not positioned close to the front of the home.

Consideration of the request for special hearing is complicated by the fact that neither the Baltimore County Code or the Baltimore County Zoning Regulations contain regulations addressing the matter. Apparently, there is but a brief reference in the Zoning Commissioner's Policy Manual (pg. 1A-3), and the bottom line is that such transfers "may" be granted provided the "end result" does not create additional density or lots. In this case, Mr. Livingston indicated the Department of Environmental Protection and Sustainability did not oppose the relief, provided

that no additional lots are thereafter created on the parcels transferred. I am satisfied that the Department of Environmental Protection and Sustainability has thoroughly evaluated this request, and will therefore grant the relief, subject to the conditions enumerated below.

Based on the evidence presented, I also find that the variance can be granted in such a manner as to meet the requirements of Section 307 of the B.C.Z.R., as established in *Cromwell v. Ward*, 102 Md. App. 691 (1995). I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Indeed, the subject property is rural and very remote, and is mostly wooded. I also find that strict compliance with the B.C.Z.R. would result in practical difficulty or unreasonable hardship upon Petitioner.

Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the absence of community opposition and the support of the Department of Environmental Protection and Sustainability.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, this 19th day of April, 2012 by the Administrative Law Judge for Baltimore County, that the Petition for Special Hearing seeking relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), as follows:

- To abandon the special exception in Case No. 1949-1411-X approved for use as a social club (gun and hunting club);
- To permit the non-density transfer of a 3.869 acre parcel to an adjoining property (containing 1.017 acres +/-) owned by John L. Calhoun as shown on Petitioner's Exhibit 1;
- To permit the non-density transfer of a 1.053 acre parcel to an adjoining property (containing 1.017 acres +/-) owned by John L. Calhoun as shown on Petitioner's

Exhibit 1, and

- To permit the non-density transfer of a 0.730 acre parcel to an adjoining property (containing 1.000 acres +/-) (known as 18801 Spooks Hill Road) owned by John L. Calhoun as shown on Petitioner's Exhibit 1,

be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 1A01.3.B.3 of the B.C.Z.R., to permit a side yard setback of 0' in lieu of the required 35' on the original 1.017 acre parcel, be and is hereby GRANTED.

The relief granted herein shall be conditioned upon and subject to the following:

1. The Petitioner may apply for any required building permits and may be granted same upon receipt of this Order, however the Petitioner is hereby made aware that proceeding at this time is at his 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 Petitioner will be required to return and be responsible for returning said property to its original condition.
2. There shall be no rights of subdivision or development associated with the non-density transfers approved in this Order. In other words, there shall be no additional density or building lots created as a result of the approval of the special hearing relief. None of the three (3) non-density parcels transferred herein, nor the 1.000 acre, +/- (known as 18801 Spooks Hill Road) and 1.017 acre, +/- (identified as parcel 2 on Tax Map 16, Account Identifier 0615005050) parcels into which the non-density parcels were transferred, shall hereafter be subdivided in any fashion.
3. Within one hundred twenty (120) days of the date of this Order, new Deeds shall be recorded in the Land Records of Baltimore County referencing this case and incorporating the conditions and restrictions of this Order.

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge for
Baltimore County

JEB:pz