

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(3636 Belmont Avenue)		
4 th Election District	*	OFFICE OF
4 th Councilmanic District		
Christie Benet &	*	ADMINISTRATIVE HEARINGS
Elizabeth Worthington Benet		
<i>Legal Owners</i>	*	FOR BALTIMORE COUNTY
Petitioners		
	*	Case No. 2015-0142-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed by Christie Benet and Elizabeth Worthington Benet, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows: (1) to approve the relocation of the proposed dwelling site, driveway and curtilage as shown on the Plat accompanying the Petition (Alternative A), together with a determination that by subsequent legislative act of the County Council, rezoning the entire property to R.C.2, the relief and restrictions granted in Case No. 91-134-SPH (the “Prior Order”) were rendered moot; or (2) in the alternative, approval of the Alternative B Plat (new agricultural protective easement) accompanying this Petition, including without limitation relocation of the proposed dwelling site, driveway and curtilage together with removal of conditions Nos. 2,3,4,& 5 of the Prior Order.

Appearing at the public hearing in support of the requests were Geoffrey Schultz, a licensed surveyor whose firm prepared the plans and owners Christie and Elizabeth Worthington Benet, represented by Howard L. Alderman, Jr., Esq. There were no Protestants or interested citizens in attendance, and the file does not contain any letters of opposition. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations.

Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). DOP opposed the request, and that agency believes that granting the Petition would in fact allow 3 lots on an R.C.2 parcel when only 2 are permitted, and that the dwelling relocation request would result in the loss of valuable agricultural land. I respectfully disagree, as discussed below. DPR requested that the Petitioners convey a certain easement to the County at no cost, and a condition to that effect is included in the Order below.

The subject property is zoned R.C.2, and is approximately 21.437 acres in size. Cases of this nature are a bit like assembling a jig-saw puzzle, inasmuch as they require an examination of prior deeds, plans and Orders to determine the current status of the property vis a' vis the B.C.Z.R. For present purposes, the chronology begins in 1978, when the Bakers acquired 88 acres of land in rural Baltimore County. Approximately 36.4 acres was at that time zoned R.C.4 while the remainder (51.6 acres) was zoned R.C.2. In 1979, the County Council first enacted density/area controls for the R.C.2 zone; now codified at B.C.Z.R. §1A01.3. Under this regulation the 51.6 acre R.C.2 portion of the parcel could be subdivided into no more than two lots. That in fact occurred: in 1989 Baker transferred 12 acres of the R.C.2 land to Jenkins, and in 1990 39.6 acres of RC-2 land was transferred to Singh.

Also in 1989, Baker transferred the 36.4 acre R.C.4 parcel to Lerner (Petitioners' grantor). At the same time (July 25, 1989), Baker also granted to Lerner an "agricultural easement" of approximately 7 acres (zoned R.C.2) which was a portion of the 39.6 acre R.C.2 parcel noted above which was later conveyed in 1990 to Singh. Ex. No. 2. This was arguably an illegal subdivision (i.e., creating a 3rd lot) of the R.C.2 land. In any event, that easement expired

by its own terms, when Singh lawfully conveyed the 7 acre “easement” to Lerner, pursuant to the nondensity transfer approved by special hearing in Case No. 91-134-SPH. Ex. No. 3.

In 1996, during the Comprehensive Zoning Map Process (CZMP), the Council rezoned the 36.4 acre R.C.4 Lerner parcel to R.C.2. Then, in 1999 Baltimore County approved a minor subdivision (#96-077-M) creating two lots on the 36.4 acre Lerner parcel (now zoned RC-2). Ex. No. 5. This was a lawful subdivision, given that the B.C.Z.R. permits two lots to be created on an R.C.2 parcel totaling between 2 and 100 acres. §1A01.3. It is important to note the 7.1 acre “agricultural easement” conveyed to Lerner via Case No. 91-134-SPH was not used in the density calculation for the 1999 two (2) lot subdivision. See Ex. No. 5 (“density calculations”).

Thus, the sole issue in this case boils down to the placement of the dwelling on the lot. Case No. 91-134-SPH imposed a restriction that the dwelling not be sited on what was then the 7.1 acre R.C.2 “agricultural easement.” But five years hence the entire parcel owned by the Lerner was rezoned R.C.2, and thus the distinction that existed in 1991 no longer existed. Mr. Schultz testified that “prime and productive soils” are present at both the original location of the proposed dwelling (as shown on the 1999 minor subdivision plan) and at the alternate location shown on the current site plan. Thus, from an agricultural standpoint, it does not appear as if the requested location for the dwelling will have any greater impact upon the soils and acreage available to be farmed. The Petitioners testified that the “building envelope” for the proposed dwelling would be no more than 1 acre, and that Lippy Brothers currently farm a significant portion of their property, and would continue to do so after the dwelling is constructed. In these circumstances, I do not believe that approving the relocation of the dwelling would have a negative impact upon the community.

THEREFORE, IT IS ORDERED this 20th day of March, 2015, by this Administrative

Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7, be and is hereby GRANTED to the extent that the relocation of the proposed dwelling site, driveway and curtilage (as more particularly shown on the site plan marked and admitted as Exhibit 1A) is approved;

IT IS FURTHER ORDERED that Condition #3 contained in the Order in Case No. 91-134-SPH, be and is hereby STRICKEN;

IT IS FURTHER ORDERED that all other terms and conditions of the Order in Case No. 91-134-SPH shall remain in full force and effect;

IT IS FURTHER ORDERED that the remainder of the relief sought in the Petition for Special Hearing be and is hereby DENIED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must convey to Baltimore County at no cost the Environmental Greenway Easement referenced in the ZAC comment dated January 14, 2015, from the Bureau of development Plans Review.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln