IN RE: **PETITION FOR SPECIAL HEARING (2017 Western Run Road)**	*	BEFORE THE
8th Election District	*	OFFICE OF
3rd Council District		
Frank E., III & Ellen L. Potepan *Legal Owners*	*	ADMINISTRATIVE HEARINGS
Petitioners	*	FOR BALTIMORE COUNTY
	*	**Case No. 2015-0246-SPH**

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OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Frank E., III and Ellen L. Potepan, legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to "permit the relocation of a recorded 2.730 acre lot [zoned RC 2] for the purpose of improving the agricultural use of the subject property."

Appearing at the public hearing in support of the request was owner Frank Potepan. Bruce E. Doak, a licensed surveyor, assisted the Petitioners. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR).

Petitioners purchased the property several months ago. The property is comprised of two parcels: a 97± acre parcel improved with a single family dwelling and various farm buildings, and an unimproved 2.73 acre lot created in a 1978 subdivision plat. Exhibit 4.

Petitioners would like to "relocate" the 2.73 acre lot as shown on the site plan (Exhibit 1) such that it would be closer to Western Run Road. Mr. Doak suggested that similar relocations in the RC 2 zone have been permitted in prior cases when done for agricultural purposes. Following

the hearing, Mr. Doak submitted to the Office of Administrative Hearings two prior orders from the zoning commissioner (Case Nos: 96-80-SPH and 06-631-SPH). In those cases, Mr. Doak allegedly "re-arranged the pre-1979 properties for the benefit of the agricultural use."

In Case No. 96-80-SPH, former Zoning Commissioner Schmidt noted that "[t]ransfers of density in R.C. zones should be approved sparingly." (p. 10). He also stated the case "present [ed] a number of complex issues," (p.1) and an attorney represented the owner. It was for that reason the undersigned suggested at the hearing that an attorney should have handled this matter to address the significant legal issues presented. While the former zoning commissioner permitted certain density transfers in that case, the facts in that matter were much different than in the present case.

The petitioner in that case owned the property for many years, while the Petitioners purchased the subject property just months ago. The proposal in that case sought "one less [lot] than the overall tract density would allow" (p.5), while the Petitioners in this case propose the maximum number of lots permitted under the RC 2 regulations. Finally, and most importantly, the owner in the 1996 case agreed to convey over 150 acres of land to the Maryland Environmental Trust (MET) easement program (p.7) to preserve the agricultural nature of the land. Here, the petitioners have not proposed to convey property to the MET program. Simply put, there was an abundance of testimony and evidence in Case No. 96-80-SPH which persuaded the zoning commissioner to grant the relief, which in his opinion would further the goals of the R.C. 2 zone. Here, other than Mr. Doak's bald assertion that the relief would benefit the agricultural uses on the property, there is no evidence to indicate that the relocation of the lots would serve any purpose other than accommodating the Petitioners' desired location for future building lots.

The other case cited by Mr. Doak (Case No. 06-631-SPH) involved certain "non-density" transfers, and is therefore inapposite. The Zoning Commissioner's Policy Manual (Z.C.P.M.) contains a provision concerning the non-density transfer of small RC zoned parcels, and thus there was arguably authority for the relief granted in former Zoning Commissioner Wiseman's Order. Section 1A00.4.b of the ZCPM provides that the transfer of small RC zoned parcels may be permitted for purposes of access or agriculture. The present case does not involve a non-density transfer, and Case No. 06-631-SPH is irrelevant as a matter of law.

One other case frequently cited for the proposition that density can be transferred between R.C. 2 lots is Gudeman v. People's Counsel, which was ultimately decided by the court of special appeals in an unreported opinion (Case No. 396, Sept. Term 1990). In affirming the board of appeals (which denied the zoning petition) Circuit Court Judge Barbara K. Howe observed that "there is nothing in the statutes to allow transfers of density from one parcel to another." (Cir. Ct. Case No. 89-CG-911). A thorough review of the B.C.Z.R., Z.C.P.M. and County Code reveal that Judge Howe was no doubt correct, and Mr. Doak conceded that the regulations do not expressly address the issue.

The Petition in this case seeks to relocate a recorded lot created by a subdivision plat. Lots are created through the subdivision process and regulations. The B.C.Z.R. does not create (or relocate) lots, Friends of the Ridge v. BGE, 352 Md. 645, 650 (1999), and thus the requested relief cannot be granted pursuant to B.C.Z.R. §500.7. While the Regulations contain a provision for the utilization or allocation of density within a single subdivision tract in a D.R. zone, there is no such rule permitting utilization or allocation of density between separate parcels/lots in the R.C. zone. People's Counsel v. Crown Development, 328 Md. 303, 310-17 (1992).

THEREFORE, IT IS ORDERED this **15th** day of **July, 2015** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 to permit the relocation of a recorded 2.730 acre lot for the purpose of improving the agricultural use of the subject property, be and is hereby DENIED.

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