

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(2890 Anderson Road)		
7 th Election District	*	OFFICE OF
3 rd Council District		
William M.B., Jr. & Karen Chandler	*	ADMINISTRATIVE HEARINGS
<i>Legal Owners</i>		
Anitra & Jerome Schorr	*	FOR BALTIMORE COUNTY
<i>Contract Purchasers</i>		
Petitioners	*	Case No. 2016-0025-SPH

* * * * *

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 William M.B., Jr., and Karen Chandler, legal owners of the subject property, and Anitra and Jerome Schorr, contract purchasers (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”): (1) to determine the number of lots of record and rights of subdivision (density) for the subject tract, split zoned RC 2 and RC 7; and (2) to approve a lot line adjustment and/or density reconfiguration to facilitate the appropriate and permitted residential development of the subject tract.

Appearing at the public hearing in support of the request was William and Karen Chandler and surveyor Ken Wells. Lawrence E. Schmidt, Esq. represented the Petitioners. Petitioners’ immediate neighbors attended the hearing to obtain additional information about the requests. 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). That agency did not oppose the request, but provided suggested conditions for inclusion in the final Order.

This case involves a large tract of land that is split zoned RC-7 and RC-2. Counsel presented the facts by proffer, and as is frequently the case in matters involving large parcels of rural land, the devolution of title and determination of development/density rights can be quite difficult and convoluted.

The tract of land at issue in this case was originally described as containing “110.897 acres of land more or less.” *See* Deed dated February 1977 (Liber 5731, folio 762). This 1977 deed reflects that a portion of the overall acreage was conveyed to the grantor in October 1975 (5580/311) by Baltimore County, as discussed in more detail below. The 1977 deed also contained two “saving and excepting” clauses, wherein it was recited that in June and July 1968 BGE acquired two parcels totaling 19.7 acres +/-, which were out-conveyed from the original 110.897 acre tract. The utility acquired these parcels by fee simple deed, and the tract owned by Petitioners is in fact bisected into north and south portions by the BGE property. This is a crucial and pivotal fact, and counsel argues it creates separate parcels for determination of density. I agree, based upon the circuit court’s holding in the case of HZ Properties, LLC, (No. 03-C-13-006824). In that case, the court held that a conveyance to BGE (which like this case also occurred in 1968) was a grant of ownership in fee simple “as opposed to a conveyance of an ‘easement’ or ‘right of way,’” for purposes of B.C.Z.R. §1A01.3.B.1.

I believe cases from other jurisdictions support this interpretation. A fee simple conveyance, according to fundamental principles of real property law, creates “separate ownership” and therefore noncontiguous parcels. *See, e.g., Lovinger v. Lane County*, 138 P.3d 51, 54-56 (Or. 2006). As such, the BGE property creates separate north and south parcels at the site for purposes of density calculations. Accounting for the BGE conveyances noted above, Petitioners currently own approximately 91.5 acres of land, which was acquired by deed in

December 2002 (17566/385, totaling 58.7 acres) and April 2011 (30828/179, containing 32.8 acres).

Density Calculations

The site plan in this case was revised (as requested by the DOP) to depict each parcel or lot individually, along with its zoning classification and density. Petitioners contend (as shown on the plan) they are entitled to eight (8) total lots or density units throughout the entire tract. Having reviewed the deeds, site plan and other exhibits, I concur. The property is presently improved with a single family dwelling (Petitioners' residence) which would constitute one (1) density unit, and thus seven (7) additional lots would be permitted as discussed in detail below.

A "lot of record" is defined under the B.C.Z.R. as a "parcel of land with boundaries as recorded in the land records of Baltimore County..." as of [in this case] 1979. B.C.Z.R. §101.1. Employing this definition, the northern portion of the site contains two (2) "lots of record." One was created by deed and one by virtue of HZ Properties, LLC, which supports Petitioners' claim that the conveyances to BGE in 1968 created a separate lot. One of the lots is located in the northeast corner of the tract. It is 6.1 acres and was created by deed (referenced above) dated October 1975 (5580/311). This lot is zoned RC 2, and would therefore yield two (2) density rights per B.C.Z.R. §1A01.3.B.1. The other parcel is (according to the site plan) approximately 26.2 acres, and is located to the north of the BGE property which creates a "separate parcel for the purpose of calculating the number of lots of record." B.C.Z.R. §1A01.3.B.1. This land is zoned RC 7 and would yield one (1) lot or density right. Thus, three (3) density rights exist on the northern tract.

The southern portion of the site, like the northern tract, contains two (2) "lots of record." One (6.0 acres in size) was created by deed as referenced above in October 1975 (5580/311). This

property is split zoned RC 2/RC 7. It is located in the southeastern portion of the tract, and its boundaries are outlined in red on the plan. The RC 2 portion, which exceeds two acres, provides two (2) density rights. Petitioners' dwelling is located in this portion of the lot. Thus, only one (1) density right remains in the RC 2 zoned portion of this lot. The RC 7 portion of this lot is too small to provide any density.

The other lot is (according to the site plan) approximately 61.9 acres and is split-zoned RC 2/RC 7. Petitioners acquired this property by deeds dated December 2002 and April 2011, as referenced above. This lot was created by virtue of the fact that it is bound on the north by the BGE property which bifurcates the overall tract. The RC 2 portion of the lot is 20.5 acres and yields two (2) density rights. The RC 7 portion is 41.4 acres and therefore contains one (1) density unit. Thus, five (5) density rights exist on the southern tract, although one has been used for Petitioners' home.

Though I hesitate to do so for fear of injecting further confusion into an already complicated scenario, I believe for sake of an accurate assessment I am required to identify an issue concerning the illegal subdivision by deed of this property. In December 2002, K & B Homes, LLC conveyed by deed (17566/385, identified earlier) to Petitioners 58.72 acres of land. K & B purported in that conveyance to create two lots designated therein as "Part A" and "Part B." This was an illegal subdivision, and counsel noted that the principals of that entity and their attorney were convicted and sentenced to prison for their role in the deception. Unfortunately, this deed is filed in the land records, and the SDAT created separate tax parcels (Parcels 260--41.42 acres & 261--17.297 acres) based thereon. While as a legal matter the ALJ is not authorized to strike from the record that illegal conveyance, County law (B.C.C. §32-4-108 *et. seq.*) provides

that the subdivision is invalid and for purposes of the density calculations above I disregarded the December 2002 conveyance.

Density Reconfiguration

The second aspect of the special hearing petition requests that the density be reconfigured as shown on the site plan. Mr. Wells highlighted in blue on the site plan a “lot” Petitioners would like to create for their daughter and her husband. As it happens, this approval would in essence “legitimize” the illegal subdivision in 2002 discussed earlier, and state tax records already identify this unimproved parcel as “Parcel 261.”

The children would construct a dwelling on the lot, as reflected on the site plan by the notation “approximate building area.” Petitioners contend the ALJ is permitted to create the lot, citing an unreported court of special appeals opinion. Kehoe v. Arthur, (Sept. Term, 2013, No. 1448). In Kehoe, the court held the ALJ was authorized under BCZR §500.7 to determine whether a proposed reconfiguration of parcels would violate County zoning regulations. As determined above, the 20.5 acre RC 2 zoned portion of the lot where the proposed dwelling would be located contains two (2) density rights, and thus I believe the Petitioners would be entitled to create such a lot.

Even so, the Kehoe court noted that such a special hearing determination would leave the petitioner with “the obligation to obtain whatever subdivision approvals, and obtain whatever other permits their proposed uses would require.” Id. at p. 14. In the end, while that case would allow the ALJ to determine the purely legal question of whether a proposed and reconfigured lot is in compliance with the B.C.Z.R., I do not believe it entitles the ALJ to create that lot or to effect a “lot line adjustment,” as also requested in the Petition. Zoning regulations do not create lots, Friends of the Ridge v. BGE, 352 Md. 645, 651 (1999), and a “lot line adjustment” is a

development or subdivision matter for the Development Review Committee, per B.C.C. §32-4-106(b)(1).

THEREFORE, IT IS ORDERED this 28th day of October, **2015** by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7: (1) to determine the number of lots of record and rights of subdivision (density) for the subject tract, split zoned RC 2 and RC 7; and (2) to approve a lot line adjustment and/or density reconfiguration to facilitate the appropriate and permitted residential development of the subject tract, be and is hereby GRANTED in part and DENIED in part, as follows:

- A. The subject property owned by Petitioners contains eight (8) density rights, although a single family dwelling exists on site. As such, there remain seven (7) density rights on the overall tract, as detailed above.
- B. The proposed single family building lot in the southwest corner of the property, outlined on the site plan in blue, is permitted under the RC 2 density and use regulations, although that lot must be created through the Baltimore County subdivision and development process.

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.

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

JEB:sln

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County