

IN RE: PETITIONS FOR SPECIAL HEARING *	BEFORE THE
E/Side of Old York Road, (MD Route 562)	
2,020' & 3,000' S of Intersection with *	ZONING COMMISSIONER
Old York Road & Markoe Road	
(Old York Road) *	OF
10 th Election District	
3 rd Council District *	BALTIMORE COUNTY
Estate of Elizabeth W. Constable by *	Case Nos. 2009-0124-SPH
James W. Constable, Esquire, Personal	and
Representative, <i>Legal Owner</i> *	2009-0125-SPH
Eleanor W. Reade, <i>Contract Purchaser</i> *	
and <i>Petitioner</i>	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing filed by Eleanor W. Reade, the contract purchaser of properties owned by the Estate of Elizabeth W. Constable (Constable) located on Old York Road, south of Markoe Road, in Monkton. Since the properties abut one another, the two (2) cases were heard contemporaneously. In both instances, relief is requested, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) for the approval of three (3) non-density transfers from two (2) separate parcels owned by Constable. The subject property and requested relief are more particularly described on the site plan submitted in each case, which were accepted into evidence and respectively marked as Petitioner’s Exhibit 1. In Case No. 2009-0124-SPH, the Petitioner requests (1) a non-density transfer of a 1.432 acre parcel of land bearing tax identification number 10-03-047951 (Parcel 146) from Constable to the Petitioner and (2) a non-density transfer of a 18.398 acre parcel bearing the tax identification number 10-03-047952 (Parcel 181) from Constable to the Petitioner. The third transfer, under Case No. 2009-0125-SPH, requests approval of the non-density transfer of the remaining 10.623 acres of

Parcel 181 from Constable to Ronald L. Maher, Jr. and Margaret Howard Maher, owners of an adjacent tract.

Appearing at the requisite public hearing in support of the requests were Eleanor Weller Reade; Ronald Maher, Jr., adjacent property owner, and Bruce E. Doak, surveyor with Gerhold, Cross & Etzel, Ltd., who prepared the site plan. John B. Gontrum, Esquire, of Whiteford, Taylor & Preston, L.L.P., represented the Petitioner. Appearing and offering testimony on behalf of the County's Department of Environmental Protection and Resource Management (DEPRM) was Wallace S. Lippincott, Jr. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject properties are roughly rectangular shaped parcels located approximately one-half mile north of the intersection of Old York Road and Monkton Road and south of Markoe Road in northern Baltimore County. The properties are zoned R.C.2 and are subject to a Maryland Agricultural Land Preservation Foundation (MALPF) easement. The properties are unimproved and primarily contain crops. Testimony indicated that the Petitioner intends to use the properties for agricultural uses pursuant to the requirements of the agricultural preservation easements to which the properties are subject.

Mrs. Reade is the oldest daughter of the Constable family and owns property at 16131 Old York Road directly adjacent to the subject tracts. She currently uses Parcel 181 to access Old York Road from her residence. Parcel 146, which lies north of her residence is mostly wooded with significant wetland areas as shown on Petitioner's Exhibit 1. She wishes to sell a portion of Parcel 181 to her neighbor to the north Mr. Maher, whose family also owns several tracts of land, which have been placed in agricultural land preservation. By sale of this parcel she would generate enough funds to purchase the properties from her deceased parents' Estate. On behalf of the Petitioner, Mr. Gontrum proffered that both Parcel 146 and Parcel 181 are

subject to Maryland Agricultural Land Preservation easements, which restrict the nature of the use of the properties. *See* Petitioner's Exhibit 4.

Wallace S. Lippincott, Jr., Land Preservation Manager, DEPRM, appeared at the hearing and offered testimony regarding the proposed transfers. According to Mr. Lippincott, DEPRM has concerns with the proposed transfers of Parcel 181 because they do not meet the criteria for approval under the MALPF regulations and because they seemingly conflict with the DEPRM policies as set forth in Section 32-4-415 of the Baltimore County Code (B.C.C.). In this regard, Parcel 181 contains less than 50 acres and under current State regulations transfers of less than 50 acres from an agricultural easement are prohibited. One issue raised is whether these regulations would be applicable to easements that have been created prior to their adoption. Mr. Lippincott believes, as does Petitioner's counsel, that this issue involving Parcel 181 should be referred first to the MALPF Board for its determination. This Commission lacks statutory authority to resolve disputed real estate controversies.

However, with respect to the transfer of Parcel 146, Mr. Lippincott testified that DEPRM supports the transfer provided that the deed conveying the property contains a restriction that the parcel is non-buildable and that the density unit on the property may not be transferred to another property.

After due consideration of the evidence presented, I am persuaded to grant approval of the transfer of Parcel 146. All parties were in agreement that the transfer is proper, and there were no adverse comments submitted by any neighbors or by any of the County reviewing agencies to this transfer. This parcel is otherwise landlocked, and its use is distinguished from that of Parcel 181. In light of the testimony and evidence presented, it appears that the relief can be granted without violating the regulations imposed by the Maryland Agricultural Land Preservation Foundation as well as those imposed by the B.C.C.

With regard to the proposed transfers pertaining to Parcel 181, I will refrain from ruling on the matter at this time until the Maryland Agricultural Land Preservation Foundation has had an opportunity to review the request and issue a decision thereon. The records in both Case Nos. 2009-0124-SPH and 2009-0125-SPH will remain open pending a resolution by MALPF and DEPRM.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the requested special hearing relief shall be granted in part and jurisdiction shall be retained to rule on the transfers involving Parcel 181 until such time as the MALPF Board has had the opportunity to determine whether the proposed transfers conform to regulations and the goals of agricultural preservation.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 23rd day of February 2009 that the Petition for Special Hearing in Case No. 2009-0124-SPH, seeking approval to allow a non-density transfer of a 1.432 acres of Parcel 146 from the Estate of George and Elizabeth Constable to Eleanor W. Reade, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following conditions:

- 1) The 1.432 acres of Parcel 146 shall remain subject to the Maryland Agricultural Land Preservation Foundation easement and shall be used in a manner that is consistent therewith.
- 2) The deed conveying the 1.432 acres of Parcel 146 shall contain a restriction that the parcel is non-buildable and that the density unit on the property may not be transferred to another property.

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

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County