

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
N side of Barthel Road, 1170 feet NW		
from c/1 of Berans Road	*	DEPUTY ZONING
8 th Election District		
2 nd Councilmanic District	*	COMMISSIONER
(1612 Barthel Road)		
	*	FOR BALTIMORE COUNTY
Charles and Cynthia Sturm		
<i>Petitioners</i>	*	Case No. 2009-0132-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by Charles and Cynthia Sturm, the legal property owners. Special Hearing relief is requested in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a portion of the existing septic system in a different zone than the dwelling. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief on behalf of Petitioners Charles and Cynthia Sturm was Scott Lindgren with Gerhold Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence offered revealed that the subject property is irregular-shaped and consists of approximately 6.31 acres, more or less, with 4.036 acres zoned R.C.4 and 2.274 acres zoned R.C.5. The property is a panhandle lot located on the north side of Barthel Road, north of Broadway road, west of Falls Road and east of Greenspring Avenue, in the Greenspring area of Baltimore County. The property is known as Lot 20 Section II of the "Bearman Property." The subdivision was recorded on September 26, 1979. At that time, the entire property was zoned

R.C.5; however, during the 2000 Comprehensive Zoning Map Process (“C.Z.M.P.”), a portion of the property was re-zoned R.C.4 because, according to Mr. Lindgren, a stream system traveled through the subject property and other nearby properties that eventually drained into the Loch Raven Reservoir. As a result of this re-zoning, the subject property became split zoned and most of the existing septic reserve area for the existing home that was built in 1986 now lies in the R.C.4 Zone, with a small portion of the septic reserve area and the dwelling still located in the R.C.5 Zone.

At this juncture, Petitioners are proposing a minor subdivision of their property, in which proposed Lot 20A would encompass the existing two-story single-family brick dwelling and consist of approximately 2.565 acres situated primarily in the R.C.5 Zone; and proposed Lot 20B would encompass a proposed single-family dwelling and septic reserve area and consist of approximately 3.782 acres situated primarily in the R.C.4 Zone. Because of the proposed minor subdivision, the entire property now needs to be in compliance with the current Zoning Map and the applicable Zoning Regulations. In particular, Section 1A00.5 of the Zoning Commissioner’s Policy Manual (“Z.C.P.M.”) expounds upon Section 1A00.5 of the Zoning Regulations pertaining to tracts divided by R.C. Zone boundaries. As is applicable to the instant matter, Section 1A00.5.b of the Z.C.P.M. states that, for lots divided by Zone lines, “the following guidelines have been formulated so that his matter can be handled consistently.” Subsection 1(c) states that “[t]he well and septic system must be located in the same zone as the house.”

Obviously, in the instant matter, the existing septic reserve area is not in the same zone as the home. Hence, under the circumstances, Petitioners request special hearing relief to approve this configuration.

Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office Planning dated November 28, 2008 which indicate that they do not oppose Petitioners' request as the septic area is an existing condition and the acreage in each Zone supports one dwelling. Petitioners are currently processing a minor subdivision plan (08092 M) and will be required to record a plat. Comments were received from the Department of Environmental Planning and Resource Management dated December 23, 2008 which indicate that the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains, and must comply with the Forest Conservation Regulations.

Considering of all the testimony and evidence presented, I am persuaded to grant the requested relief. The evidence indicates that the existing lot was recorded in 1979 and the home built in 1986. At that time, the septic area and home were situated in the same R.C.5 Zone. Thereafter, in 2000, a portion of Petitioners' property was re-zoned so that the septic area now lies mostly in the R.C.4 Zone. This situation has now come to a head with Petitioners' proposed minor subdivision; however, this issue arose because of an intervening circumstance not attributable to Petitioners -- the re-zoning of property near streams which resulted in portions of Petitioners' property being re-zoned. Under the definition of "nonconforming use" in Section 100.1 of the B.C.Z.R. and "continuation of nonconformance" in Section 104.1 of the B.C.Z.R., in my view, the location of Petitioners' septic area and dwelling in both the R.C.4 and R.C.5 Zones, respectively, is nonconforming and should be permitted to continue as such.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered, I find that Petitioners' request for special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 17th day of February, 2009 that Petitioners' request for Special Hearing relief filed in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a portion of the existing septic system in a different zone than the dwelling be and is hereby GRANTED, subject to the following:

1. Petitioners may apply for permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
3. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

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

____SIGNED_____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz