

IN RE: **PETITION FOR SPECIAL HEARING** * BEFORE THE
W/Side Falls Road, 840' S of c/line of ZONING COMMISSIONER
Grave Run Road *
(19210 Falls Road) * FOR
5th Election District * BALTIMORE COUNTY
3rd Council District *
Rose Marie Yuhas, Widow * **Case No. 2009-0142-SPH**
Petitioner *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the legal owner of the subject property, Rose M. Yuhas.¹ The Petitioner requests a special hearing to allow a non-density transfer of a 0.460-acre parcel of land from Rose M. Yuhas (Parcel No. 2) to Rose M. Yuhas (Parcel No. 1). The subject property and requested relief are more particularly described on the site plan submitted which were accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Rose M. Yuhas, property owner, her son, Darin Yuhas, and his wife, Tabitha Yuhas, and Bruce E. Doak, the registered property line surveyor with Gerhold, Cross & Etzel, Ltd., who prepared the site plan for this property. There were no Protestants or other interested persons present.

Testimony and evidence presented revealed that the Petitioner, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) has requested approval to reconfigure lot lines of her two (2) existing contiguous parcels/lots of record as defined in Section 101

¹ On October 10, 1975, Rose Yuhas and Raymond M. Yuhas, her husband, purchased two (2) lots (the subject property) from Price Robinson and Inis Robinson and held the properties as tenants by the entireties. *See Deed* recorded in the Land Records of Baltimore County in Liber EKH, Jr. 5576, Folio 640. Raymond M. Yuhas departed this life on or about January 13, 1991, thereby vesting fee simple title in the Petitioner herein.

thereof. The adjacent parcels are located on the west side of Falls Road just south of Grave Run Road and north of Resh Mill Road in Hampstead. As shown on the site plan, Parcel 1 bearing Tax Identification No. 05-19-051100 contains 2.542 acres and is improved with the Yuhas's 1,528 square foot family home built in 1976 that is served by private well and septic.² Parcel 2 bearing Tax Identification No. 05-19-051101 is located to the south of Parcel 1 and contains 1.873 acres of unimproved land. Both parcels or lots have frontage on Falls Road and are zoned R.C.2. The entire combined density units available to the two (2) parcels of record would support a maximum of three (3) lots pursuant to the subdivision restrictions of B.C.Z.R. 1A01.3.B.1.

While the two (2) lots were created at different times by different individuals and deeds, they have remained separate since 1917. *See* Chain of Title's and Deed's received as Petitioner's Exhibit 3. The Yuhas's, as noted earlier, took title to the subject properties in October 1975. Ms. Yuhas stated that it was always the intention of she and her late husband to convey the smaller 1.873 acre parcel to their son Darin so he could build a house on it and provide for their (the elder Yuhas's) care. Their intention was never to combine the parcels. Her intention, as the owner before me, is to resolve the issue of the encroachments as illustrated on Petitioner's Exhibit 1 and to allow for the construction of a dwelling on the *proposed 1.4-acre Parcel 2.*

The difficulty inherent with this case is understanding the disparity of lot sizes brought about by the location of the common boundary line between Parcels 1 and 2. In this regard, Mr. Doak offered as Petitioner's Exhibit 2 a survey performed by A.L. Snyder, Inc. in 1998 that

² The Zoning Advisory Committee (ZAC) comment received from the Department of Environmental Protection and Resource Management (DEPRM) aptly points out that the building on this parcel shown on the site plan as "1.5 story storage" has its own septic system and is being used as a second residence.

disclosed a portion of the Yuhas home and their well encroaching over the division line between the parcels. Mr. Doak opined that this occurred by virtue of the poor descriptions in the various deeds and conveyances over the years done at different times and compounded by the loss of all but one of the property monuments over the years (*See* Petitioner's Exhibit 3 – Chain of Title's). Evidently, when the Yuhas's constructed their home in 1976 they did not know the actual location of the division line between the parcels resulting in an overlap.

In any event, each parcel has been assessed and taxed separately. The larger parcel has supported the residential use, the smaller parcel used as a pasture. Each of these lots meet the zoning regulations since the R.C.2 zone was enacted by County Council Bill 98-75 and strengthened in 1979 by Council Bill 178. In brief, each parcel is able to meet County regulations to maintain a dwelling once the requested non-density transfer is approved. The transfer is necessary to clean up the overlap area shown on Exhibit 1 brought about by poor surveying.

After due consideration of the evidence presented, I am persuaded to grant approval of the non-density transfer and the revision of property lines. The improved parcel will increase in size to 3.002 acres, thereby reducing the unimproved parcel to 1.413 acres. The reconfigured parcels will both have ample area and setbacks. Access to the Petitioner's home is by way of a private driveway that currently bisects Parcel 2. This driveway will be realigned to provide each parcel with access to Falls Road and/or a private driveway easement agreement should the Petitioner sell either property. The revised property lines do not affect density beyond that otherwise allowed by the B.C.Z.R. and the Petitioner will not acquire any rights of subdivision. In my judgment, the non-density transfer and lot line adjustment will not be detrimental to the health, safety or general welfare of the locale and is consistent with the Petitioner's use of the

R.C.2 zoning of the subject and adjacent properties. The issues raised in the Petition are pursuant to the authority granted in Section 500.7 of the B.C.Z.R. Thus, my decision in this matter is based on the zoning of the subject property, the proposed dimensions for each lot and other zoning defined issues. I find that the relief being requested does not rise to a minor subdivision of the property but rather a lot line adjustment. I wish to point out, however, that I do not have the authority, nor will this decision attempt, to determine issues of processing limited exemptions. These regulations have been relegated by the County Council to the Development Review Committee. *See, Long Meadow Association, Inc. et al v. Druid Ridge, LLP et al*, No. 1808 (Md. Ct. Spec. App., Sept. Term 2005), *cert. denied*, 393 Md. 478 (2006) and County Council Bill 54-05.

Based upon the testimony and evidence offered, I am persuaded to grant the Petition for Special Hearing. Indeed, it appears that the non-density transfer and the reconfiguration of the lot lines is consistent with the R.C.2 zoning and will be beneficial to the Petitioner and her successors and assigns.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 25th day of February 2009, that the Petition for Special Hearing to allow a non-density transfer of a 0.460 acre parcel of land from Rose M. Yuhas (Parcel No. 2) to Rose M. Yuhas (Parcel No. 1) for the use of Darin Yuhas, et ux, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following conditions:

- **ADVISORY:** This Order approves the requested non-density transfer. The Petitioner, when applying for a building permit for new construction, must comply with the Baltimore County Code, Article 33, Title 3, Protection of Water Quality, Streams, Wetlands and Floodplains regulations.

- 1) The Petitioner is hereby made aware that proceeding at this time is at her own risk until the thirty (30) day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) It is recognized that the conveyance will result in the loss of the second dwelling designated on Petitioner's Exhibit 1 as a "1.5 story garage" on Parcel 1 by agreement of the parties. There shall be no other density units available or accruing from the acreage consisting of Parcels 1 and 2 which are limited to one (1) dwelling house on each parcel and this condition shall bind the Petitioner, her successors and assigns.
- 3) Petitioner shall backfill the septic system and tank located on Parcel 1 serving the 1.5 story storage building upon the issuance of a use and occupancy permit for the proposed dwelling on Parcel 2.
- 4) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED that any appeal of this decision must be entered within thirty (30) days of the date hereof.

WJW:dlw

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