

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
N/S Quiet Oaks Lane, 1,000 ' S of		
Maplehurst Road	*	ZONING COMMISSIONER
(606 Quiet Oaks Lane)	*	FOR
7 th Election District	*	BALTIMORE COUNTY
3 rd Council District	*	
Thomas Pringle and Anita P. Major	*	Case No. 2009-0238-SPH
<i>Petitioners</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by Thomas Pringle¹, the legal owner of the subject property, by and through his attorney, Jasmin M. Torres, Esquire. The Petitioner requests a special hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a second dwelling on a lot for in-law quarters to be occupied by Anita Major, his daughter. The subject property and requested relief are more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Thomas Pringle, property owner, his daughter, Anita P. Major, and Jasmin M. Torres, Esquire, their attorney. Gail Robinson-Brown, a family friend, appeared in support to the request as did his immediate neighbors who live on Quiet Oaks Lane, namely: Regina Lynn DeSantis and Lauri A. and Peter V. Amy. Other neighbors submitted written and notarized affidavits of support received as Petitioners' Exhibit 6. Appearing in opposition were Mark M. Pearce and Brooks W. Thropp, both of whom reside just

¹ Mr. Pringle's wife, Grace L. Pringle, is also listed as owner of the property on the Maryland Department of Assessments and Taxation Real Property Data Sheet. It was made known during the hearing that she has departed this world vesting fee simple ownership in the Petitioner.

south of the subject property on Hereford Road. Patrick J. and Linda M. Kelly (601 Quiet Oaks Lane) submitted a letter in opposition to the proposal as they were unable to personally appear at the hearing. *See* Protestants Exhibit 1.

Testimony and evidence offered revealed that the subject rectangular-shaped parcel contains 3.00 acres and improved with Petitioners existing one-story, single-family dwelling and accessory sheds in the Monkton area of the County. The property is zoned R.C.5 and bisected centrally (east to west) by a private drive known as Quiet Oaks Lane that runs west from Hereford Road just south of Maplehurst Lane. The dwelling, built in 1968, is on the northern side of Quiet Oaks Lane and is served by private septic and well. The Petitioner, who has resided on the property for 47 years, testified that he is getting up in his years and would like to build another dwelling structure on the south side of the private road as illustrated on the site plan to be occupied by Anita Major, his only child, who would then be able to care for him. This new dwelling, to be known as 607 Quiet Oaks Lane, would also be served by a separate septic tank and well. Each dwelling (existing and proposed) would be surrounded by 1-½ acres of land with access from the private road which is shared with other neighbors (*See* Petitioner's Exhibits 3, 4 and 6). The first question this Commission must address is whether or not the proposed dwelling structure is allowed under current zoning regulations. I find that, based on the regulations for permitted uses in an R.C.5 zone, the proposal is not allowed. There is no guarantee that once a structure of this size is built, it would ever be abandoned. The proposal also does not fit the definition or purposes of accessory uses in the B.C.Z.R. To classify the new dwelling as "in-law quarters" is a misnomer.

Mr. Pringle asserts that at the time he and his wife purchased the property in 1963, prior to the R.C.5 zoning regulations, two separate lots of records were contemplated. He submits as evidence a Contract of Sale (Petitioner's Exhibit 2) by and between he and his wife and Claude and

Lorraine Ellis for the purchase of the lot of ground on the northerly side of the right-of-way (Quiet Oaks Lane). Reverend Ellis, now deceased, was Tom Pringle's friend and he (Ellis) was to build on that lot; the Pringles on the 1-½ acres on the south side of the right-of-way. For financial reasons, the Ellis' were unable to consummate the contract and the subject three acres were never subdivided.² Moreover, Ms. Torres asserts, notwithstanding the above, that the subject property has been effectively subdivided into two separate lots by operation of law. She aptly argues in her Memoranda that when the County Council addresses an issue, it is supposed to be all knowledgeable, and enacts legislation that addresses its desires and intent. In the R.C. zones, the Council has enacted statutes pertaining only to two zones where a public or private road running through a parcel/lot does not create separate lots of record:

In the R.C.2 zone, B.C.Z.R. Section 1A01.3.B.1 provides:

“Subdivision lot density ... in cases where land in single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right-of-way or easement shall not be considered separate parcels for the purpose of calculating the number of lots of record”.

Likewise, in the R.C.7 zone, B.C.Z.R. Section 1A08.6.B.1 provides:

“Maximum lot density ... in cases where single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right-of-way or easement may not be considered separate parcels for the purpose of calculating the number of lots of record”.

Ms. Torres points out that no such limitation has been adopted regarding R.C.5 zoned property. So, she argues: The County Council has only prohibited “subdivision by roadway” in the R.C.2 and R.C.7 zones and not in the R.C.5 zone. It has been stated that it is the responsibility of the

² A search of the land records of Baltimore County clearly demonstrate that John Hessian owned 11 acres and conveyed the same to Joshua and Florence Sterrett and Mary Lee in 1953 (Liber 2321, page 3). The Starett, having departed this life, vested title in Mary S. Lee, as survivor, and she, having married Alfred Matthews, then conveyed three (3) of the 11 acres to the Pringles (liber 4131, page 140). It is this 3-acre parcel that is the subject of the petition before me.

Zoning Commissioner to determine the intent of the legislature when construing any regulation/statute. In this case, it falls upon the undersigned to determine the intent of the Baltimore County Council when it enacted the Resource Conservation zones of the B.C.Z.R. and adopted the language therein. (*Marzullo v. Kahl* 36 Md. 158, 175 (2001)). Nowhere do the regulations cite that one lot or one parcel is subdivided by a public or private road. Accordingly, and this will give the Petitioner little comfort, I am not persuaded by counsel's argument in this regard.

The Protestants expressed concern regarding the precedent the Petitioner's proposal would set. Mr. Pearce, who owns 4-1/2 acres south of the property, is a long-time resident of the area. He wants to know what will happen to the two dwellings on the one lot when either Mr. Pringle or Ms. Major no longer resides in them. Will they become rental properties? Likewise, Mr. Thropp, whose land adjoins the Petitioners, wants to preserve the Resource Conservation zone, and states that the rear of his property faces the now vacant and heavily wooded portion proposed for development. He states there is a small stream that runs through the forest buffer area behind the property and that the removal of trees for another home and septic area would result in detrimental environmental impacts.

The undersigned cannot find anything in the B.C.Z.R. that permits a second dwelling on a single lot or even an apartment in an accessory structure. The Office of Planning, in its Zoning Advisory Committee (ZAC) comment, supports this position but goes on to discuss past exceptions in certain circumstances for in-law type quarters. The lot area required in the R.C.5 zoning classification is controlled by the density control and lot area provisions of B.C.Z.R. Section 1A04.3.B.1(a) which states in pertinent part, "*The maximum gross residential density is 0.5 dwelling per acre*". That is to say, in order to subdivide the subject property Mr. Pringle would need a minimum of four (4) acres as provided in County Council Bill 128-2005.

Considering all of the testimony and evidence presented at the public hearing, and subsequent Memoranda presented by Ms. Torres, I am not persuaded that the Petitioners have met their burden in this case. In my judgment, the current precedent established by this Commission and that of the Director of Permits and Development Management is to allow “in-law” living quarters as an addition to an existing dwelling, where there is the medical necessity of an elderly relative. Under this precedent, the matter before me does not meet the requirements to allow “in-law” quarters in the existing principle structure. I am concerned, that by allowing the proposed living arrangement in a second dwelling on the subject property, the density of the property is increased beyond what is allowable in the R.C.5 zone. The Petitioner’s special hearing request to allow living quarters for his daughter, Anita Major, should therefore be limited to an accessory structure attached to the existing single-family home.

Pursuant to the advertisement, posting of the property, and public held thereon, and for the stated reasons, the Petition for Special Hearing should be denied.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County, this 16th day of June 2009, that the Petition for Special Hearing seeking approval for a separate second dwelling on a lot of record for in-law quarters, in accordance with Petitioner’s Exhibit 1, be and the same is hereby DENIED; and

Any appeal of this decision must be taken within thirty (30) days in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

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