

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
W side of Hanover Road; 179 feet N of the c/l of Butler Road	*	DEPUTY ZONING
Election District	*	COMMISSIONER
Councilmanic District (12910 Hanover Road)	*	FOR BALTIMORE COUNTY
Springlake Farms, Inc. & Bush Meadows, LLC	*	
<i>Legal Owners</i>		
Bosley Construction Company	*	Case No. 2010-0015-SPHA
<i>Lessee</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Gary L. Bosley on behalf of the legal owners of the subject property, Springlake Farms, Inc. and Bush Meadows, LLC, and the lessee, Bosley Construction Company. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 and pursuant to Section 104.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) for Property #1 (also known as Parcel 319) owned by Springlake Farms, Inc. and for Property #2 (also known as Parcel 1118) owned by Bush Meadows, LLC, to affirm the continuation of an existing non-conforming use over time and over lot lines without regard to internal setback lines. Petitioner is also requesting Variance relief from Section 1A01.3.B.3 for Property #2 (also known as Parcel 1118) owned by Bush Meadows, LLC to permit a side yard setback of as little as 0 feet in lieu of the 35 feet required. The subject property and requested relief are more fully described on the site plans that were marked and accepted into evidence as Petitioner’s Exhibits 1A (for the special hearing petition) and 1B (for the variance petition), respectively.

Appearing at the requisite public hearing in support of the requested relief was Petitioner Gary L. Bosley on behalf of Bosley Construction Company, Springlake Farms, Inc. and Bush Meadows, LLC, and Deborah C. Dopkin, Esquire, attorney for Petitioner. Also appearing in support of the requested relief was Kenneth Colbert with Colbert Matz Rosenfelt, Inc., the professional engineer who prepared the site plans. Attending the hearing as interested citizens were George Harman of 5429 Weywood Drive and S. Glenn Elseroad of 5423 Mt. Gilead Road in Reisterstown, MD.

Testimony and evidence offered revealed that the subject property is irregular-shaped and consists of two parcels of land -- Parcel 319 which is approximately 88.18 acres in size and Parcel 1118 which is approximately 53.10 acres in size, for a total site area of just over 141 acres. As shown on the most recent zoning map that was marked and accepted into evidence as Petitioner's Exhibit 2, the property is predominantly zoned R.C.2, with small, incidental areas zoned R.C.4, R.C.5, R.C.8, D.R.3.5, and B.L.-C.R. The property is located primarily on the west side of Hanover Pike (Route 30), just north of the terminus of Interstate 795 and its intersection with Butler Road, in the Reisterstown area of Baltimore County. Access to the property is by way of a driveway leading from Hanover Pike near the southeast corner of the property. There is a combination of uses near the subject property that are reflected in the varying zoning classifications, including commercial, residential, and agricultural. As seen in the aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 3, there is residential development to the southeast, a lumberyard, veterinary center, and landscape contractor to the north, and wooded areas and farmland that surrounds the property.

Petitioner's attorney, Ms. Dopkin, explained that the subject property that includes Parcels 319 and 1118 have essentially been in the Bosley family since 1954. By 1996, Charles Bosley was the sole stockholder of Springlake Farms, Inc. and was the only member of Bush

Meadows, LLC, hence, he effectively controlled both properties. Mr. Bosley died in 2007 and Bush Meadows, LLC is now controlled by Gary and Jerry Bosley. Springlake Farms, Inc. now has other stockholders among the Bosley family, including a number of Charles Bosley's heirs. The reason the instant Petitions were filed stems from a one-story building that was built in approximately 2003. As shown on the site plans, the buildings related to the operation of Petitioner's contracting business are located primarily on the southeast portion of Parcel 1118, including the building that is the subject of the instant Petitions. Not being aware of the significance of the internal lot lines between Parcels 1118 and 319, Charles Bosley directed that the one-story building be built in 2003.

Unfortunately, as also shown on the site plans, a corner of this one-story building was constructed directly on the property line between Parcels 1118 and 319. A Code Enforcement Correction Notice was issued on November 21, 2008 for failure to obtain building, plumbing and electrical permits for the construction of an office building.¹ As such, Petitioner Gary Bosley is requesting variance relief in order to legitimize this existing building. Petitioner is also requesting special hearing relief to affirm the continuation of the use of the property for a contracting business and contractor's yard as an existing non-conforming use over time and over lot lines without regard to internal setback lines.

In support of the special hearing request, Mr. Colbert, Petitioner's consulting engineer, discussed his investigation into the history of the property and revealed that the overall 141 acre site was acquired by Springlake Farms, Inc. (of which Mr. Bosley was a shareholder) from the Kirkpatrick family in 1954. In 1992, Springlake Farms, Inc. sold a portion of the 141 acre property to Charles Bosley. This 53 acre parcel came to be known as Parcel 1118, with the remaining 88 acres owned by Springlake Farms, Inc. becoming known as Parcel 319. In 1998,

¹ Case No: CO-0053330

Charles Bosley sold Parcel 1118 to Bush Meadows, LLC. As early as 1958, Charles Bosley leased the entire 141 acre tract from Springlake Farms, Inc. At that time, Charles Bosley operated his contracting company, Bosley, Inc., from the subject property. His company performed site development including grading, paving, storm drains, etc., and also used the property as a contractor's yard for running the business and storing equipment and materials.

During that same time, in an area of Parcel 319 located east of Parcel 1118 as shown on a more detailed aerial photograph that was marked and accepted into evidence as Petitioner's Exhibit 4, Mr. Bosley built a home, barn, and outbuildings. Mr. Bosley lived there for many years and used the barn and buildings for storage of miscellaneous equipment and supplies. The 1971 zoning map that was marked and accepted into evidence as Petitioner's Exhibit 5 shows most of the property then zoned M.L. and Mr. Bosley's use of the property for his contracting business was a permitted use. The 1976 zoning map that was marked and accepted into evidence as Petitioner's Exhibit 6 saw the imposition of the R.C. zoning and shows the same area that was zoned M.L. had been changed to R.C.2. According to Gary Bosley, the various buildings related to the contracting business had been destroyed by fire many years ago and replaced; moreover, the use of the property for Bosley Contracting Company has been relatively unchanged since 1971, and Mr. Bosley merely wishes to continue that use.

As to the variance, the offending building was erected in the area from which the contracting business is operated. According to Gary Bosley, his father, Charles Bosley, never really differentiated between the two parcels and the fact that there were internal lot lines between Parcels 1118 and 319. The one-story building was built in a location that was most logical and convenient in terms of where the driveway and other buildings were situated. In short, Charles Bosley did not account for the setback requirement for the building because he viewed the property as one large piece of land, since he effectively controlled ownership of both

parcels. As to this issue, Mr. Colbert indicated that the need for the variance is driven by the presence of these internal lot lines. He also pointed out unusual factors associated with the property, including the commonality of ownership of the parcels, commonality of use, the location of the building in essentially the center of the property -- where the contractor use is occurring. He also pointed out that there would be no increase in density associated with the request, nor would there be any detrimental effects on the surrounding community.

Mr. Harman and Mr. Elseroad testified as interested citizens. These gentlemen are familiar to this Commission as a result of their work with the Reisterstown Owings Mills Glyndon Coordinating Council (ROG). They also testified on behalf of the Hanover Road Association. They did not express opposition to the instant petitions or to Petitioner's present use of the property for the Bosley Contracting Company; however, they were concerned about any potential changes in the use or expansion of the use. Obviously, with the imposition of R.C. zoning in these areas of the North County, the preference is conservation and protection of the land from overdevelopment or from uses inconsistent with the conservation goal. On the other hand, Mr. Harman and Mr. Elseroad recognize the present use has been ongoing on the property for approximately 50 years. They do not wish to have that use terminated, per se, but want to make sure that strict adherence to the requirements of a nonconforming use will be maintained going forward.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Resource Management dated September 9, 2009 which indicates that development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains. Development must also comply with the Forest Conservation Regulations.

Turning first to the Petition for Special Hearing to affirm the continuation of an existing non-conforming use over time and over lot lines without regard to internal setback lines, I am persuaded to grant the requested relief. In the context of this case and in deciding whether the current activity is within the scope of the non-conforming use, four factors should be considered: (1) to what extent does the current use of property reflect the nature and purpose of the original non-conforming use; (2) is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind; (3) does the current use have a substantially different effect upon the neighborhood; and (4) is the current use a “drastic enlargement or extension” of the original non-conforming use. *See, County Commissioners of Carroll County v. Zent*, 86 Md.App. 745, 753, 587 A.2d 1205 (1991), quoting *McKemy v. Baltimore County*, 39 Md.App. at 269-70, 385 A.2d 96 (1978).

Based on the evidence presented, I find that the current activity on the property for Petitioner’s contracting business and as a contractor’s yard has been ongoing and relatively unchanged for the past 50 years. It began with Charles Bosley who, through Springlake Farms, Inc., purchased the 141 acre tract in 1954 and began using the property for his site development contracting company in 1958. That use has continued with Mr. Bosley’s children, and in particular Gary and Jerry Bosley. Although the previous M.L. zoning of the property was changed with the imposition of the R.C. zoning, and but for the construction of the one-story building that is also the subject of the variance request, the use of the property has remained relatively constant over the years. Hence, I find that the current use is consistent with the four factors referenced above.

As to the variance request, I am also persuaded to grant this relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request, including the irregular shape of the adjoining properties, the commonality

of ownership as well as of use, and the presence of these internal lot lines. These conditions render the property unique in a zoning sense. Moreover, if strict compliance with the zoning regulations for the property were required, Petitioner would suffer practical difficulty and undue hardship in the potential removal of the offending building, merely based on the impact that these internal lots lines have on the setback requirements.

I further find that the variance request can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. Thus, I find that the variance can be granted in such a manner as to meet the requirements of Section 307.1 of the B.C.Z.R.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner's special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 28th day of October, 2009 that Petitioner's Special Hearing request in accordance with Section 500.7 and 104.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to affirm the continuation of an existing non-conforming use over time and over lot lines without regard to internal setback lines be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's Variance request from Section 1A01.3.B.3 to permit a side yard setback of as little as 0 feet in lieu of the 35 feet required be and is hereby **GRANTED**.

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that he may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.

2. 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).
3. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
4. Compliance with the above regulations, Article 33, Title 3 Protection of Water Quality, Streams, Wetlands and Floodplains and Article 33, Title 6 Forest Conservation may result in significant easements and protective covenants being recorded in Baltimore County Land Records which restrict disturbance and use of those areas.
5. Any request for continuation of use in the required forest buffer easement (FBE) or setback from the FBE would require a variance application submittal to DEPRM. A variance request is no guarantee of approval.
6. The reduction of zoning setbacks allowed by this request would not apply to the building setbacks required by Article 33, Title 3 Protection of Water Quality, Streams, Wetlands and Floodplains and Article 33, Title 6 Forest Conservation.
7. In order to ensure continued compliance with the requirements of a non-conforming use and to limit any impermissible changes or expansions of that use, it is expressly acknowledged and understood by Petitioner, subject to the specific provisions and exceptions set forth in Section 104 of the B.C.Z.R. that in general, upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

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