

IN RE: **PETITION FOR SPECIAL HEARING** * BEFORE THE
S/S Trenton Mill Road, 1,230' W
Thomas Shilling Court * ZONING COMMISSIONER
(5305-5325 Trenton Mill Road)
5th Election District * OF
3rd Council District * BALTIMORE COUNTY
Allender Property I, LLC * Case No. 2010-0065-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 John F. Owings, Jr., Member, of Allender Property I, LLC, by and through its attorney, Lawrence M. Hammond, Esquire, of Hammond & Hammond, L.L.C. The Petitioner requests a special hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), for the purpose of determining density and zoning regulation application for the 24 acre parcel as it relates to the Baltimore County boundary and to amend the note on the revised site plan in Case No. 03-332-SPH referencing the proposed lots being in Carroll County. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requests were John F. Owings, Jr., and Douglas C. Myers, members of the property owner, and Lawrence M. Hammond, Esquire, the Petitioner's attorney. There were no Protestants or other interested persons present.

This most unusual case relates to the proper dividing line between Baltimore and Carroll County. Testimony and evidence offered demonstrates that the property is located on the south side of Trenton Mill Road just east of Hanover Pike (MD. Rte. 30) adjacent to the Piney Branch Golf and Country Club in Hampstead. The property contains a gross area of 24 acres, more or less, of R.C.2 zoned land. The property was acquired by Deed, dated January 6, 2009,

and recorded among the Land Records of Baltimore County in Liber No. 27590, Folio 411 (re-recorded to Petitioner in Liber SM No. 27584, Folio 631). Later, an additional parcel, which comprises a small part of the property, was also acquired by the Petitioner from Jane Allender Mauser and Joan Allender Offner. The property, which is the subject matter of this hearing, was once a part of a larger tract of land which lies on both sides of the boundary line between Baltimore and Carroll Counties. The Petitioner entered into a contract of sale to purchase all of the property located along Trenton Mill Road that lies on the east side of the boundary line between Baltimore and Carroll Counties. The Petitioner acquired title to this property by Deed, dated January 30, 2004, and recorded among the Land Records of Baltimore County in Liber SM No.19617, Folio 339. Mr. Hammond stated that as a result of a lengthy controversy involving the respective County attorneys and State Legislature, a survey by Walter T. Tydings, Registered Property Line Surveyor, ascertained that the boundary line the parties used with respect to determining what portion of the seller's property was in Baltimore County and what part was in Carroll County was the boundary line set forth in the Acts of the General Assembly of the State of Maryland, December Session, 1835, Chapter 256, which created Carroll County from property located in both Baltimore and Frederick Counties. Mr. Myers testified that there have been a number of questions and disputes with respect to the true location of the boundary line over the many years. Consequently, Allender Property II, LLC developed what was believed to be all of the property it owned and located in Baltimore County as a minor subdivision known as "Golf Club Estate" (PDM No. 04-004M). The boundary line as set forth in the Acts of 1835 was accepted by Baltimore County with respect to its aforementioned minor subdivision. In this regard, this Commission held a hearing in Case Number 03-332-SPH granting approval for the redistribution of density. By his Order, dated October 14, 2003, then Deputy Zoning Commissioner, John V. Murphy, stated among other things,

“that if and when the final dividing line between Baltimore and Carroll Counties is determined by the State Legislature, that the dimensions of Lot 3 and the two roadway out parcels shall be suitably adjusted. . .”

In an attempt to remedy the situation, both County surveyors, Patrick A. Simon and Richard S. Krebs, determined to alter the location of the boundary line as to follow the “*stones*” as set in the 1841 survey of the County line prepared by Aamon Richards, which in effect created this substantial parcel of land which is the subject of this hearing. *See* Petitioner’s Exhibit 3.

The Petitioner next secured an agreement with the County’s Department of Permits and Development Management (DPDM), which is memorialized in a letter, dated March 28, 2006, signed by both Timothy M. Kotroco, Director, and Donald T. Rascoe, Deputy Director, of the DPDM. A copy of the letter was received as Petitioner’s Exhibit 2. Mr. Hammond opined that in accordance with this administrative adjustment as contemplated in Deputy Zoning Commissioner Murphy’s Order, that the subject property having been determined to be located in Baltimore County is now to be treated as a new parcel, which can be subdivided into two (2) building lots as illustrated on the site plan and pursuant to current R.C.2 regulations. Additionally, the Petitioner had filed litigation in the Circuit Court for Baltimore County. In its complaint, Allender Property sought a declaratory judgment that the boundary line between Baltimore and Carroll Counties is the line described in the Acts of 1835. That case (03-C-07-00754) was closed on August 25, 2007, and the property is presently shown as lying and being situated in Baltimore County on Tax Map No. 19.

In sum, I find from the testimony and evidence that the Petitioner is legally entitled to subdivide the subject 24-acre parcel into two (2) building lots pursuant to B.C.Z.R. Section 1A01.3.B. Lot 1 will be on the north portion of the tract with access from Trenton Mill Road and consist of 8.859 acres. Lot 2 will consist of 15.003 acres and as shown on Exhibit 1 will be on the southern portion of the tract located between the Carroll County line and the Piney Branch

Golf Course. I will mandate that the Petitioner obtain whatever form of development approval is required from the Department of Permits and Development Management.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the determination that the new parcel located in Baltimore County will yield two (2) building lots is decided in the affirmative.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 25th day of November 2009 that the Petition for Special Hearing, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), for the purpose of determining density and zoning regulation application for the 24 acre parcel as it relates to the Baltimore County boundary and to amend the note on the revised site plan in Case No. 03-332-SPH referencing the proposed lots being in Carroll County, in accordance with Petitioner's Exhibits 1, 2 and 3, be and is hereby GRANTED; subject to the following restrictions:

1. Petitioner must obtain any and all development approvals as required by the Department of Permits and Development Management (DPDM) pursuant to Article 32 of the Baltimore County Code (B.C.C.), and
2. The Petitioner is made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from the date of this Order has expired. If for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

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