

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
NE/S Mount Vista Road, 375' SE of		
Cedar Lane	*	ZONING COMMISSIONER
(7404 Mount Vista Road)		
11 th Election District	*	FOR
3 rd Council District		
	*	BALTIMORE COUNTY
Linda Schulte		
Petitioner	*	Case No. 2010-0109-SPH

* * * * *

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 owner of the subject property, Linda Schulte, through her attorney, Lawrence E. Schmidt, of Gildea & Schmidt, LLC, for the property located at 7404 Mount Vista Road in Kingsville. The Petitioner requests special hearing relief pursuant to Section 500.7 as follows: (1) To allow a non-density transfer of 1.21 acres of land, more or less, from Parcel 1 to Parcel 2; (2) to allow a non-density transfer of 2.59 acres, more or less, from Parcel 1 to Parcel 3; (3) to allow a non-density transfer of 0.46 acres, more or less, from Parcel 2 to Parcel 3; and (4) to allow access for the land locked Parcel 1 to a public street through an existing 20-foot right-of-way in lieu of the required in-fee simple strip as stated in Section 32-4-409(b)(1) and provided for in Section 32-4-409(c) of the Baltimore County Code (B.C.C.). 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 request were Linda Schulte, property owner, her husband, Steven R. Schulte, and Kenneth J. Wells, with kj Wells, Inc., the property line surveyor who prepared the site plan. The Petitioner was represented by Lawrence E. Schmidt, Esquire. Appearing as interested persons were Edward Chase, a nearby property owner, and Michael Pierce, President of North County Preservation.

Testimony and evidence presented disclosed that Ms. Schulte is the owner of an overall tract of land approximately 11.07 acres in area, zoned R.C.5. The property is located on the southeast corner of Mount Vista Road and Cedar Lane in Kingsville. The overall tract is actually comprised of three (3) separate parcels. Parcel 1 is a roughly rectangularly shaped parcel that was originally owned by John V. Love. This parcel is improved with an existing single-family dwelling and attached garage. The dwelling is quite old, and in fact is historically significant and listed with the Maryland Historic Trust (BA-236). Although the main body of the parcel of this lot is rectangular in shape, a portion of Parcel 1 resembles a “tail” and provides vehicular access to Mount Vista Road. This tail contains a driveway which provides access to the interior of the site. The other two (2) parcels owned by Ms. Schulte are unimproved. Previously, they were owned by William Ruppert, and were at one time part of an overall tract proposed for development by Mr. Ruppert as a residential subdivision to be known as Day’s Woods Manor. The Ruppert property was approximately 106 acres in area, zoned R.C.5. Mr. Ruppert proposed subdivision of the tract into 15 single-family detached dwelling lots. These lots were all substantially sized. In addition to the building lots, the Development Plan for Day’s Woods Manor (Petitioner’s Exhibit 2) also shows a large area (27.94 acres) reserved for future development, labeled as Tract A. This Development Plan was approved by Order in Case No. XI-711 on September 28, 1995. The community has since been subdivided and built out.

As referenced in the Hearing Officer’s Opinion and Development Plan Order for Day’s Woods Manor (Petitioner’s Exhibit 3), Mr. Ruppert proposed conveyance of two (2) smaller parcels to Mr. Love. As noted in the Opinion and shown on the Development Plan (Exhibit 2), parcels known as Tract B and Tract C were conveyed to Mr. Love. Tract B was approximately 1.59 acres, and Tract C was approximately 4.17 acres. As noted in the Hearing Officer’s written

decision, the tracts identified as Tracts B and C “each contain one density unit.” Ms. Schulte ultimately acquired all of the lands owned by Mr. Love. They included the original parcel with the house located on it, as well as Tracts B and C. Pursuant to the R.C.5 zoning regulations and the terms and conditions of the prior Order, Tract B can be developed with one (1) single-family detached dwelling, and Tract C can likewise be developed with one (1) single-family detached dwelling. The original parcel owned by Mr. Love is of such acreage that it can be subdivided into two (2) building lots. Thus, there is a potential for four (4) residential lots. Messrs. Schmidt and Wells explained, when questioned by Mr. Chase, that the level of detail is not required in association with the requested relief and that the suggested dwelling locations, driveway, and septic and well locations have not been reviewed or approved by any Baltimore County reviewing agencies. Instead, Petitioner will undertake such a review with specificity as part of the County subdivision process.¹

Ms. Schulte, in view of her age and financial circumstances, proposes to encumber the original Love property with a reverse mortgage. In order to reduce the area of her lands that will be encumbered with that mortgage, she proposes the special hearing relief as outlined above. Non-density transfers are proposed so as to reconfigure the three (3) lots and acreage thereof. Lot 1 will be reduced in acreage so it will be 1.52 acres in area. As the proposal is for non-density transfer, that property will continue to have two (2) density uses (i.e., rights of subdivision); however the reduction in acreage will make it so that a subdivision is not practically feasible. Parcel 2 will be expanded to 5.12 acres and Parcel 3 expanded to 4.43 acres.

¹ 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 uses on each parcel and other zoning defined issues. I do not have the authority, nor will this decision attempt, to determine issues of processing limited exemptions from the department regulations which have been relegated by the County Council to the Development Review Committee (DRC). *See, Long Meadow Association, Inc., et al v. Druid Ridge LLP, et al.* Court of Special Appeals No. 1801 (2005) and County Council Bill 54-05.

As before, these parcels will continue to have one (1) density unit associated with them.

Mr. Chase appeared at the hearing and expressed certain concerns regarding the subdivision of the property. However, as was explained to him, the request before me is only for zoning relief, and does not result in any increase in overall density. Instead, as noted above, although the density will remain identical as before, Ms. Schulte, from a practical standpoint, will “lose” a potential building lot, since the parcel that can be subdivided will be reduced in size. Additionally, it was explained to Mr. Chase that the zoning relief granted does not permit the building of any structures on the newly configured Parcels 2 and 3 (i.e., formerly Tracts B and C). The Petitioner will be required to obtain approval for any development on those parcels under the County’s development regulations, and in fact Mr. Wells testified that application has already been made to the Development Review Committee (DRC) in this case. The DRC has tabled any action under the development regulations pending finality of this zoning case. Additionally, any development of the parcels would be subject to the County’s environmental regulations, which will be onerous given the character of the property. As is well-known, the Kingsville area is not served by public sewer, and the soils therein do not easily perc. Thus, whether future development is even possible on this property is questionable. Moreover, Ms. Schulte will be required to comply with all other applicable regulations, including zoning (i.e., setbacks), historic limitations imposed by the designation of the dwelling on Parcel 1, and other setbacks due to the scenic character of Mount Vista Road.

Based on the testimony and evidence presented, I am persuaded to grant the relief requested. It is again emphasized that the request is not for development approval; rather, it is for zoning approval for the non-density transfers. Although Mr. Chase would prefer a more definitive drawing of what may happen on the overall tract, that is a premature issue which is

simply not before me.

Pursuant to the advertising, posting of the property, and public hearing on this petition held, and for the reasons set forth above, the requested non-density transfers shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 21st day of December, 2009, that the Petition for Special Hearing filed pursuant to Section 500.7, requesting approval of: a non-density transfer of 1.21 acres of land, more or less, from Parcel 1 to Parcel 2; to allow a non-density transfer of 2.59 acres, more or less, from Parcel 1 to Parcel 3; to allow a non-density transfer of 0.46 acres, more or less, from Parcel 2 to Parcel 3, and to allow access for the land locked Parcel 1 to a public street through an existing 20-foot right-of-way in lieu of the required in-fee simple strip as provided in Section 32-4-409(b)(1) and per the exception stated in Section 32-4-409(c) of the Baltimore County Code (B.C.C.), be and is hereby GRANTED subject to the following condition:

- The Petitioner shall be required to apply to the Development Review Committee (DRC) for a limited exemption under Baltimore County Code (B.C.C.) Section 32-4-106(a)(1)(viii) concerning the lot line adjustment.

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

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