

IN RE: <b>PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
E/S Park Heights Avenue (MD Rte. 139), 393'		
SE of c/line of Walnut Avenue	*	ZONING COMMISSIONER
<b>(12149 Park Heights Avenue)</b>		
	*	FOR
4 <sup>th</sup> Election District		
2 <sup>nd</sup> Council District	*	BALTIMORE COUNTY
Nancy L. Rhoten, <i>Legal Owner</i>	*	
Kelly E. Rhoten, et ux, <i>Contract Purchasers</i>		
	*	
<i>Petitioners</i>		<b>Case No. 2010-0238-SPH</b>

\* \* \* \* \*

**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, Nancy Rhoten, through her attorney, J. Neil Lanzi, Esquire. The Petitioner requests a special hearing to approve the non-density transfer of 4.115 acres of land from the subject property to the contract purchasers (her son and daughter-in-law) who own an adjacent improved parcel known as 3013 Walnut Avenue.<sup>1</sup> The subject property and requested relief are more particularly described on the site plan, which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requested relief were Nancy Rhoten, property owner, and Keith A. Heindel, the registered professional land surveyor with Professional Surveys, LLC, who prepared the site plan. The Petitioner was represented by J. Neil Lanzi, Esquire. There were no Protestants or other interested persons in attendance at the public hearing.

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<sup>1</sup> Kelly E. and Jody S. Rhoten acquired 3013 Walnut Avenue from Nancy Rhoten's mother in 2001. They reside in the one-story, single-family dwelling built in 1964. The well that serves their residence is on the property to be transferred – placing the well, septic reserve area and dwelling on the same parcel.

Testimony and evidence presented disclosed that Nancy Rhoten owns a large two-story farm house in Owings Mills that was built many years ago. This property is also improved with a large garage once used for storage and agricultural purposes. This farm house and land has been in the family's ownership since 1963 and is now unoccupied and in disrepair as shown in the photographs submitted as Petitioners' Exhibit 3. The garage is maintained and used by Kelly Rhoten and as shown on the site plan is located behind his home in accordance with B.C.Z.R. Section 400.1. This tract of land, referred to as 12149 Park Heights Avenue, contains approximately 5.965 acres and is split-zoned R.C.5 and B.L.-C.R. The B.L.-C.R. portion is on Park Heights Avenue just north of the Mr. Charles Market; the R.C.5 area is to the rear and consists of approximately 4 acres. This portion (R.C.5) is non-buildable due to environmental constraints including wetlands and streams crossing the non-density parcel. Eco-science Professionals, Inc. has been retained to delineate the limit of the non-tidal wetlands in this regard. The property, as noted, is located on the east side of Park Heights Avenue but extends beyond the rear of her son's property at 3013 Walnut Avenue, then widens with 275 feet of the lot's northern boundary running adjacent to Walnut Avenue. The property, therefore, abuts the rear and east side of the land owned by Kelly and Jody Rhoten and used for residential purposes. The family has entered into an agreement to transfer a 4.115-acre parcel from Nancy Rhoten's holdings to her son and daughter-in-law in conjunction with the uses on their property. Testimony indicated that Kelly and Jody own approximately 0.485 acres of land (3013 Walnut Avenue) that is improved with a one-story, single-family dwelling and carport. The land that will be transferred from Nancy Rhoten is, except for a garage, unimproved, largely wooded, with streams, wetlands and steep slopes, and has for years been used and maintained by her son with

her permission.<sup>2</sup>

At this point, the families wish to formally transfer the property, and the conveyance is not for the purpose of transferring any density, but merely to provide additional land and to establish a new property line between these respective owners, consistent with the actual use and topographical features of these parcels. Nancy Rhoten's lot will be reduced in acreage so it will be 1.850 acres in area (1.5 acres zoned R.C.5 and .35 acres zoned B.L.-C.R.) with an existing dwelling. Kelly and Jody's parcel will be expanded to 4.6 acres. This transfer is within the spirit and intent of the Resource Conservation Zones involving the exchange of small parcels. *See* the Zoning Commissioner's Policy Manual (ZCPM) at Page 1A-3, Section 1A00.4.b(3).

A Zoning Advisory Committee (ZAC) comment received on March 26, 2010 from Diana Itter, on behalf of the Office of Planning (OP), stated in pertinent part that the Office of Planning supports this proposal and non-density transfer provided that:

“If in the future the existing dwelling, located at 3013 Walnut Avenue is razed, any new single family dwelling must submit architectural elevation drawings for review and approval in accordance with Section 1A04.4 of the BCZR, Performance standards for RC5.

If the existing dwelling at 12149 Park Heights Avenue is converted to a commercial use, a site plan must be submitted for review for compliance with CR (Commercial, Rural District) overlay requirements.” *Emphasis Added*

Based upon the testimony and evidence offered, I easily find that the Petition for Special Hearing should be granted. Clearly, there will be no detrimental impact to any adjacent property owners. Moreover, as noted above, there is no density or rights of subdivision being conveyed.

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<sup>2</sup> Both properties were owned by Nancy Rhoten's father and mother. Through inadvertence, they placed the well that serves 3013 Walnut Avenue on the 12149 Park Heights parcel. The families are now trying to clean up this situation allowing good titles to both parcels with new septic reserve areas. These areas are shown on the site plan and perc tests have been performed and approved by DEPRM.

Thus, there will be no alteration to the existing property rights of these owners, and the Petition for Special Hearing shall be granted.

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 28<sup>th</sup> day of April 2010, that the Petition for Special Hearing to approve a non-density transfer of 4.115 acres from the Nancy Rhoten property, known as 12149 Park Heights Avenue, to the Kelly E. Rhoten and Jody S. Rhoten property known as 3013 Walnut Avenue, thereby positioning the well and new septic reserve area on the same parcel as the dwelling they serve, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their 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) The relief granted herein is strictly for a non-density transfer and there are no density or development rights associated with this conveyance.
- 3) If in the future the existing dwelling, located at 3013 Walnut Avenue is razed, architectural elevation drawings for a replacement dwelling must be submitted to the Office of Planning for review and approval.
- 4) If the existing dwelling at 12149 Park Heights Avenue is converted to a commercial use, a site plan must be submitted for review in compliance with the C.R. District Overlay requirements.

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

WJW:dlw

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