

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
E/S Stumpfs Road, 2,075' N of c/line		
Ebenezer Road	*	ZONING COMMISSIONER
(6502 Blackhead Road)		
	*	FOR
15 th Election District		
6 th Council District	*	BALTIMORE COUNTY
Brian J. Eurice	*	Case No. 2010-0243-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 the owner of the subject property, Brian J. Eurice. The Petitioner requests a special hearing to approve as a legal non-conforming condition, pursuant to Section 104 of the Baltimore County Zoning Regulations (B.C.Z.R.), the existing two (2) dwellings currently located within the 1.78 acre portion of the property zoned R.C.2, positioned at the north end of the parcel along Bird River, and to confirm the density of the overall property based on current zoning. The subject property is split-zoned, with the northern portion containing the existing dwellings zoned R.C.2 (1.78 acres +/-), the middle portion zoned R.C.50 (14.33 acres +/-), and the southern portion zoned R.C.2 (19.30 acres +/-). 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 1.¹

Appearing at the requisite public hearing in support of the request were Brian J. Eurice, property owner, and Joseph V. Eurice, his father and prior owner of the property. The Petitioner was assisted by G. Dwight Little, Jr., P.E. of Little and Associates, Inc., the consultant who

¹ Subsequent to the hearing, Little and Associates, Inc. amended the site plan as requested at the onset of the hearing to reflect the actual dimensions of all improvements “existing conditions” located on the property.

prepared the site plan for this property. There were no Protestants or other interested persons present.

Testimony offered by Brian Eurice was that he and his wife, Tina, reside at the existing one story dwelling at 6502 Blackhead Road. Mr. Brian Eurice's brother-in-law, Mike Custodero, currently resides at 6504 Blackhead Road. A third structure is also located within the R.C.2 area along Bird River; however, this structure was damaged by Hurricane Isabelle and has not been occupied for three (3) or more years. *See* "existing dilapidated 1 story structure" on Petitioner's Exhibit 1. This structure is not included in the request to validate a non-conforming status.

Testimony offered by Joseph V. Eurice was that the property was acquired by his father, Joseph Adam Eurice, Jr., in 1937.² Two (2) dwellings were present when the property was acquired and two (2) new dwellings were added in 1940. Joseph Eurice testified that two (2) livable dwellings still exist on the property and have been in continual habitation since that time. The dwelling at 6502 Blackhead Road was remodeled in 1990 as indicated on the State Department of Assessments and Taxation (SDAT) records; however, the dwelling has been in existence and continuous habitation since 1940.

Evidence provided by Mr. Little included aerial photographs of the property from 1938 and 1952 (*See* Petitioner's Exhibits 2 and 3). The aerial photographs were obtained from the Baltimore County Soil Conservation District. Mr. Little marked in red on each exhibit the existing dwellings on the property.

Except for the improvement shown as "existing dilapidated 1 story structure" on the site plan, which received storm damage and has not been occupied for at least three (3) years, the

² Joseph Eurice, born in 1926, was 11 years old when his father purchased the waterfront property fronting on Bird River in eastern Baltimore County.

testimony and evidence offered was persuasive to a finding that non-conforming status should be granted and allowed to continue for the other two (2) identified dwellings, known as 6502 and 6504 Blackhead Road, as well as three (3) existing accessory structures. In this regard non-conforming uses are defined in Section 101 of the B.C.Z.R. and regulated by Section 104 thereof. Often the non-conforming use designation is sought to grandfather an otherwise illegal use. That is, if the Petitioner can establish that the use began prior to the effective date of the zoning regulation which prohibited such use, and the use has continued without interruption since that time, that use may continue as non-conforming. In this case, the undisputed testimony and evidence presented was persuasive that the non-conforming status should be afforded this property.

Petitioner has requested confirmation by the Zoning Commissioner of available density of the overall property. The testimony and evidence offered on this issue follows the Density Summary table found on Petitioner's Exhibit 1. Section 1A00.5 of the R.C. regulations states that parcels divided by a zone boundary shall be treated as separate tracts for density calculation purposes. The subject property is divided into three (3) portions by zone lines; density based on zoning shall be computed individually for each of the three (3) portions. The northern portion of the property, zoned R.C.2, is located on the north side of Blackhead Road and the southern shoreline (wooden bulkhead) of Bird River and contains 1.78 acres.³ One (1) density unit exists for this portion. The middle portion of the property, zoned R.C.50, contains 14.33 acres. One (1) density unit exists for this portion. The southern portion of the property, zoned R.C.2, contains 19.30 acres. Two (2) density units exist for this portion. Therefore, the property contains four (4) density units based on zoning (five density units so long as the existing non-

³ The property has, in fact, already been effectively divided by Blackhead Road.

conforming status remains valid). This finding is based solely on current zoning of the property. Actual achievable density can only be determined after applying all other development regulations.

In this regard, the “Eurice Property” is proceeding through the Development Review Committee (DRC) process (DRC No. 051110A). In open hearing, Petitioner requested that I rule on the non-conforming and confirmation of density portions of his Petition in order to provide direction on how to proceed. It should be noted, however, that included within the Petition for Special Hearing was a request for the undersigned “to waive the subdivision plan requirements to allow for subdivision by deed along the R.C.2 and R.C.50 zone line in accordance with Section 32-4-107(a)(I)(ii) of the Baltimore County Code”. I question my authority to do so and this decision will not attempt to determine issues of processing limited exemptions or waivers from the Development Regulations which have been relegated by the County Council to the Director of Permits and Development Management (DPDM). *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.

The purpose of a public hearing is to resolve issues raised in the Petition pursuant to 500.7 of the B.C.Z.R. Thus, my decision in this matter is based on the zoning of the subject property, the dimension of the tract divided by zone boundaries and other zoning defined issues. Therefore, the nature of these findings is final and will serve as a final Order on the two (2) zoning issues decided above.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for reasons set forth above, the relief requested shall be granted in part.

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 4TH day of May 2010, that the Petition for Special Hearing to approve as a legal non-conforming use, pursuant to Section 104 of the Baltimore County Zoning Regulations (B.C.Z.R.), the existing two (2) dwellings located within the 1.78 acre portion of the property zoned R.C.2, at the north end of the parcel fronting on Bird River, and seeking approval and confirmation of the density available on the overall property, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioner is hereby made aware that proceeding at this time is at his 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) Compliance with the ZAC comment, dated April 20, 2010, submitted by DEPRM relative to Chesapeake Bay Critical Area regulations and development of the site within the Limited Development Area (LDA) and Resource Conservation Area (RCA) requirements. A copy of this comment is attached hereto and made a part hereof.

IT IS FURTHER ORDERED, that the Petitioner's request to waive the subdivision plan requirements to allow for subdivision by deed along the R.C.2 and R.C.50 zone line(s) in accordance with Section 32-4-107(a)(1)(ii) of the B.C.C., be and is hereby DISMISSED AS MOOT, as this relief must be submitted to the Director of the Department of Permits and Development Management for a determination.

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