

<b>IN RE: PETITION FOR SPECIAL HEARING</b>	*	BEFORE THE
W side of Burke Road; 2,700 feet SW		
of the c/l of Old York Road	*	DEPUTY ZONING
7 <sup>th</sup> Election District		
3 <sup>rd</sup> Councilmanic District	*	COMMISSIONER
(19520 Burke Road)		
	*	FOR BALTIMORE COUNTY
<b>Craig J. and Karen M. Kehoe</b>	*	<b>CASE NO. 2011-0061-SPH</b>
<i>Petitioners</i>		

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed by the legal property owners, Craig and Karen Kehoe. Petitioners request Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve the reconfiguration of density in Parcels 1, 2 and 3 and a non-density transfer of Parcel 3, and of the remainder of Parcel 2, to Parcel 1. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief were Petitioners Craig and Karen Kehoe. Also appearing in support of the relief was Roy Snyder with A.L. Snyder Surveyor, Inc., the registered property line surveyor who prepared the site plan. Also appearing as concerned citizens were Lisa Arthur and Bill Sellers of 19500 Burke Road.

Testimony and evidence was presented at the hearing, and additional evidence was adduced via written submissions from Petitioners, Mr. Snyder, and Ms Arthur, as well as photographs of the subject property. The testimony, evidence, and written submissions revealed that Petitioners’ property is irregularly shaped and contains approximately 73.1419 acres overall, zoned R.C.2. The property is located on the west side of Burke Road, east of Graystone Road and southwest of Old York Road, in the White Hall area of Baltimore County. The majority of Petitioners’ property

consists of Parcel 1 (as outlined on the site plan in orange) containing approximately 52.8460 acres. Petitioners reside on that parcel and it has a number of improvements, including a two-story dwelling, a very large concrete block and frame barn, several outbuildings, as well as a number of large paddock areas for pasturing or exercising horses or other animals. Parcel 2 (outlined on the site plan in pink) contains approximately 8.2939 acres. This parcel is improved with a large oval outdoor horse track. Parcel 3 (outlined on the site plan in blue) is triangular shaped and contains approximately 12.0080 acres and is an unimproved, wooded parcel.

According to Mr. Snyder, Petitioners' land use and zoning consultant, Parcel 2 is the 8.2939 acre remainder of the original Parcel 2 following a minor subdivision in 1996. Lot 1, which is a 3.09 acre lot that was created as part of the minor subdivision, is located just south of the now-existing Parcel 2 and is owned by Ms. Arthur, one of the interested citizens in attendance at the hearing. Parcel 2 has one potential density unit. Parcel 3 is the unimproved parcel and has two potential density units. Because of the somewhat landlocked nature of Parcel 3 and in order to cluster further development toward the public road and away from agricultural and rural lands, Petitioners desire to transfer the two density units from Parcel 3 to a portion of Parcel 2 (with its one density unit), as shown on the site plan and outlined in yellow. On Parcel 2, this would result in the creation of Lots 1, 2, and 3, each ranging in size from 1.2 to 1.3 acres. With no more density available for Parcel 3, Petitioners propose the non-density transfer of Parcel 3 to Parcel 1. In addition, Petitioners propose the non-density transfer of the remainder of Parcel 2 (with no further density) also to Parcel 1.

Testifying in opposition and providing written evidence concerning the case was Lisa Arthur. As indicated above, Ms. Arthur owns the 3.09 acre lot that was created following the minor subdivision of Parcel 2 in 1996, located just south of the outdoor horse track. Ms. Arthur questions whether the parcels in question possess the available density indicated by Petitioners and

Mr. Snyder. Following the hearing, she submitted a letter dated November 10, 2010 with accompanying Deeds and photographs, discussing the history of Parcels 1 and 2. She also stated a number of reasons why she believes the requested transfers of density from Parcel 3 to Parcel 2 and the non-density transfers should not be granted. Specifically, Ms. Arthur indicated that Burke Road is a single lane wide, small dead end road with a 25 mph speed limit. It is a very rural road with extreme curves. She does not believe further development along this road would be beneficial to the community. Ms. Arthur also indicated that most of the homes along Burke Road have significant visual buffering with mature vegetation and trees that help create privacy from other properties. A new development on Petitioners' property would not have such natural screening. Finally, Ms. Arthur points out that development of three additional homes would likely increase property taxes for those already there, and also states the current housing market does not support additional home building in the area.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated September 16, 2010 which states that Petitioners seek to reconfigure density from Parcel 3 (12 acre parcel – 2 density rights) and place it on Parcel 2 (8.2 acres – 1 existing density right, 3 proposed). Parcel 1 is 52.84 acres and contains the existing horse farm, one dwelling and one tenant house and has a total of 2 density rights which will remain. Petitioners' surveyor, Albert Snyder, indicates that the Petitioners seek to place the farm parcel, Parcel 1, in the MALPF easement program. The Planning Office supports the requested relief as it is in keeping with the existing land use pattern in the area, which has the majority of the farm in the MALPF program. The Planning Office reserved comment on the proposed lot layout, house siting and panhandle driveway location and will make such comment as part of the minor subdivision process. Comments were also received from the Department of Environmental Protection and Resource Management ("DEPRM") dated

November 4, 2010 indicating that the Development Coordination Section has no objection to the accumulation of density into in one parcel. However, in order to develop the property, all of the parcels from which the density came should be included in any proposed subdivision. In addition, Wallace A. Lippincott, Jr. with DEPRM's Land Preservation Section stated that development of this property must comply with the Prime and Productive Soil Policies and be consistent with the protection of agricultural resources in accordance with R.C.2 Zoning Regulations. He also states that:

The accumulation of density can be supported in this case if the landowner agrees to certain conditions that protect and foster the protection of agricultural lands and resources. The conditions are: (1) place parcel 3 into a Forest Conservation Easement with DEPRM (or a similar conservation easement), (2) place the remaining 8.23 acres of parcel 2 under a permanent conservation easement, and (3) place a restriction in the land records that any further subdivision of parcels 1, 2, and 3 will be limited to a two acre lot. Lastly, it is recommended that the landowner investigate placing the remaining farmland in a land preservation program.

Dan Esser of the Groundwater Management Section states that if new lots are created by Zoning Petition, then any new building permits will not be approved by Groundwater Management until approved (and passing) perc tests are conducted and new well(s) are drilled for each lot.

Turning now to the instant matter, after considering the testimony and evidence, I am persuaded to grant the special hearing relief. The evidence indicates that Parcel 3 has two density units and the remainder of Parcel 2 has one density unit for a total of three density units. Rather than attempting to develop the wooded, unimproved Parcel 3, which would involve creating accessibility to this largely landlocked parcel, as well as significant tree clearing, Petitioners instead wish to utilize the density from Parcel 3 and use it to further develop Parcel 2. There are already existing homes along Burke Road and Petitioners desire to create lots where the existing

unused horse track is located. There would be no further density associated with Parcel 3 or the remainder of Parcel 2. Although I can appreciate the sentiments of Ms. Arthur and the opposition of other neighbors in the community, in my judgment, the requested relief will not be detrimental to the health, safety, or general welfare of the area, and the granting of the relief is within the spirit and intent of the Zoning Regulations. As indicated by the Planning Office, the special hearing relief is in keeping with the existing land use pattern in the area. In addition, Section 1A01.3.B.2 of the B.C.Z.R. states that “[a] lot having an area less than one acre may not be created in an R.C.2 Zone.” In the instant matter, as shown on the site plan, Petitioners propose to create lots on Parcel 2 that will be between 1.2 and 1.3 acres in area.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioners’ request for special hearing should be granted with conditions.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 14<sup>th</sup> day of December, 2010 that Petitioners’ request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve the reconfiguration of density in Parcels 1, 2 and 3 and a non-density transfer of Parcel 3, and of the remainder of Parcel 2, to Parcel 1, be and is hereby **GRANTED** subject to the following conditions:

1. Petitioners may apply for permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. In order to develop the property, all of the parcels from which the density came should be included in any proposed subdivision.

3. Any new building permits will not be approved by the Groundwater Management Section of DEPRM until approved (and passing) perc tests are conducted and new well(s) are drilled for each lot.
4. Development of this property must comply with the Prime and Productive Soil Policies and be consistent with the protection of agricultural resources in accordance with R.C.2 Zoning Regulations.
5. Petitioners shall acknowledge and agree to the following conditions set forth by Wallace A. Lippincott, Jr., Program Manager for Agricultural and Rural Land Preservation, which will protect and foster the protection of agricultural lands and resources:
  - a) Place Parcel 3 into a Forest Conservation Easement with DEPRM (or a similar conservation easement);
  - b) Place the remaining 8.23 acres of Parcel 2 under a permanent conservation easement; and
  - c) Place a restriction in the land records that any further subdivision of Parcels 1, 2, and 3 will be limited to a two acre lot.
  - d) Lastly, it is recommended that the landowner investigate placing the remaining farmland in a land preservation program.

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

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SIGNED  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz