

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
E side of Rayville Road; 197 feet NE of		
the c/l of Spooks Hill Road	*	DEPUTY ZONING
6 th Election District		
2 nd Councilmanic District	*	COMMISSIONER
(1747 Rayville Road)		
	*	FOR BALTIMORE COUNTY
Michael P. Lamonica, Doris P.		
Lamonica and Linda L. Monk	*	
<i>Petitioners</i>		CASE NO. 2011-0140-SPH
	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Hearing filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) that involves the above-captioned property known as Parcel 17 and owned by Thomas and Michael Lamonica, Parcel 189 owned by Thomas and Michael Lamonica, Parcel 185 owned by Doris and Thomas Lamonica and Linda Monk as Trustees, and Parcel 119 owned by John and Sandra Betsill. The Special Hearing request is to allow the non-density transfer of 1.5071 acres of land from one parcel to another in an R.C.2 Zone. 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 was Petitioner Michael P. Lamonica and Rick Richardson with Richardson Engineering, LLC, the professional engineer who prepared the site plan. There were no Protestants or interested persons in attendance.

Testimony and evidence presented revealed that the aforementioned properties are located at the eastern intersection of Rayville Road and Spook Hill Road in the Parkton area of northern

Baltimore County. The site plan shows the exact location of the parcels, which are situated side by side in an easterly direction from Rayville Road. The parcels have been in the Lamonica family for many years, having been purchased originally in 1973. A subdivision to create two lots as shown on the site plan was done in 1996. This created Lot 2 (also known as Parcel 119) and Lot 1 (also known as Parcel 185), and in 1998 Lot 2 was sold to Mr. and Mrs. Betsill.

Thereafter in 2004, Petitioners created the smaller Parcel 189 off of Lot 1 (Parcel 185). According to Mr. Richardson, Petitioner's consulting engineer, a property description was created and was recorded in the Land Records of Baltimore County as Parcel 189, but it is not a valid separate parcel for subdivision purposes. It is essentially an illegal subdivision of Lot 1, even though Lot 1 had no further density rights. Petitioner currently resides at the one acre Parcel 17 that fronts Rayville Road. At this juncture, Petitioner desires approval of a non-density transfer of Parcel 189 into Parcel 17. This would give the combined property owned by Petitioner an area of approximately 2.5 acres. On the surface, this might enable Petitioner to then turn around and subdivide his property and re-establish a separate property of at least 1 acre in the R.C.2 Zone.¹ However, in requesting the instant special hearing relief for a non-density transfer of Parcel 189 into Parcel 17, Petitioner acknowledges and agrees that he cannot do this and that there is no density associated with Parcel 189 and there shall be no ability to subdivide the combined parcels any further if the transfer is approved. Petitioner is also aware that he would still need to request a lot line adjustment before the Development Review Committee ("DRC") in order to re-draw the property line for the combined Parcels 189 and 17 owned by Petitioner.

¹ Section 1A01.3.B.1 of the B.C.Z.R. states that "[n]o lot of record lying within an R.C.2 Zone and having a gross area of less than two acres may be subdivided. No such lot having a gross area between two and 100 acres may be subdivided into more than two lots (total), and ... [a] lot having an area less than one acre may not be created in an R.C.2 Zone."

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated November 8, 2010 which indicates that they do not oppose the request provided the transfer will not pave the way for, nor create an additional building lot. Comments were received from the Department of Environmental Protection and Resource Management dated December 1, 2010 which indicates that development of the property must comply with the Forest Conservation Regulations.

After considering the testimony and evidence, I am persuaded to grant the requested special hearing relief. The granting of the relief will correct an illegality associated with the creation of Parcel 189, without creating or extending any further density rights to Parcel 189. Essentially, Parcel 189 (which should not have been created or recorded in the first place) will, for all intents and purposes “go away” and cease to exist. It will become part of Parcel 17 and will increase the size of Petitioner’s property from one acre to 2.5 acres, but with no right to subdivide or create any additional lot(s) from Petitioner’s new, larger property. In my view, this is a sensible and equitable result, and a fitting demise for Parcel 189.

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.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 13th 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 allow the non-density transfer of 1.5071 acres of land from one parcel (known as Parcel 189) to another parcel (known as Parcel 17) in an R.C.2 Zone, in accordance with the site plan accepted into

evidence as Petitioner's Exhibit 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. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
3. Petitioner acknowledges and agrees that there is no density associated with Parcel 189 and there shall be no ability to further subdivide the combined Parcels 189 and 17 into another separate lot.
4. Petitioner is aware that, notwithstanding the granting of the special hearing relief, he will be required to request a lot line adjustment before the Development Review Committee ("DRC") in order to re-draw the property line for the combined Parcels 189 and 17 owned by Petitioner.

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

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz