

|  |   |                               |
|--|---|-------------------------------|
| <b>IN RE: PETITION FOR SPECIAL HEARING</b> | * | BEFORE THE                    |
| NW side of Valley Mill Road, 1,700 feet    |   |                               |
| SW of the c/l of Bentley Road              | * | DEPUTY ZONING                 |
| 6 <sup>th</sup> Election District          |   |                               |
| 3 <sup>rd</sup> Councilmanic District      | * | COMMISSIONER                  |
| (20116 Valley Mill Road)                   |   |                               |
|  | * | FOR BALTIMORE COUNTY          |
| <b>Barbara L. Miller</b>                   |   |                               |
| <i>Petitioner</i>                          | * | <b>CASE NO. 2011-0163-SPH</b> |

\* \* \* \* \*

**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 owner of the subject properties, Barbara L. Miller. Petitioner requests Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve the transfer of a density unit to an adjoining parcel of land from Barbara L. Miller (Parcel 52) to Barbara L. Miller (Parcel 308) and the nondensity transfer of 6.8 acres to an adjoining parcel of land from Barbara L. Miller (Parcel 308) to Barbara L. Miller (Parcel 52).<sup>1</sup> The subject properties and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing relief was Petitioner Barbara L. Miller and Bruce E. Doak with Gerhold Cross & Etzel, Ltd., the professional land surveyor who prepared the site plan, as well as Petitioner’s son, Brent Miller, her husband Jeffrey Miller, and Tristan Raab. Also attending was Wallace A. Lippincott, Jr., Program Manager for Agricultural and Rural Land Preservation on behalf of the Department of Environmental Protection and Resource Management. There were no Protestants or other interested persons in attendance.

---

<sup>1</sup> At the start of the hearing, Mr. Doak requested to amend the Petition to reflect that the request for nondensity transfer was actually for 10.07 acres and not 6.8 acres as indicated in the Petition. This amendment was granted.

Testimony and evidence presented revealed that the subject properties are irregular shaped and are located on the northwest side of Valley Mill Road, north of Walker Road and east of Beckleysville Road, in the Freeland area of northern Baltimore County. The properties consist of Parcel 308, which contains approximately 44.636 acres, and Parcel 52, which contains 8.706 acres. Both parcels are split zoned R.C.2 and R.C.8. The density calculations and devolutions of title for the properties are detailed on the site plan. Parcel 308 is improved with Petitioner's existing two-story dwelling, as well as a stable and several agricultural outbuildings.

The R.C.2 zoned portion of Parcel 308 has utilized the one density unit permitted with Petitioner's existing single-family dwelling. The R.C.2 zoned portion of Parcel 52 has one density unit available. In addition, the R.C.8 zoned portions of Parcels 308 and 52 have two total density units available. Petitioner desires to help her son build a home on the available density on Parcel 52; however, as shown on the site plan and the aerial photographs that were marked and accepted into evidence as Petitioner's Exhibits 2A and 2B, the topography of Parcel 52 shows significant slopes and is heavily wooded. As also shown on the aerial photographs, there are areas of Parcel 308 that are cleared of trees. Hence, Petitioner desires to help her son locate a proposed house on one of those cleared areas of Parcel 308 as shown on the site plan. This location also has very good access at the terminus of the existing driveway from Valley Mill Road. In order to do so, Petitioner desires to transfer a density unit from Parcel 52 to adjoining Parcel 308. In addition, Petitioner desires approval of a nondensity transfer of 10.07 acres from Parcel 308 to Parcel 52. This would result in the location of one single-family dwelling on the newly enlarged 18.776 acre Parcel 52 and a reduction in the size of Parcel 308 from 44.636 acres to 34.566 acres.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated December 15, 2010 stating that the Office supports the requested transfer of the single development right and the non-density tract provided that it can be demonstrated that the development right still exists with Parcel 52 and was not utilized by the 4.7 acres saved and exempted from L7370F146. The Planning Office recommends as a condition of approval that the Petitioner apply to the Development Review Committee for determination of further subdivision process. Comments were received from the Department of Environmental Protection and Resource Management dated December 20, 2010 which indicates that development of the property must comply with the Regulations for the Protection of Water quality, Streams, Wetlands and Floodplains and must also comply with the Forest Conservation Regulations. Mr. Lippincott with DEPRM's Agricultural Preservation also indicated in the same DEPRM comment that the property is located in an Agricultural Preservation Area in the Freeland area. It is split zoned R.C.2 and R.C.8. The two parcels were originally part of the same parcel. The property is in the vicinity of preserved properties. It is primarily wooded with some hay fields. It is adjacent to a significant amount of woods. The property is generally steep and has streams on it. While there are two density units on Parcel 52, the R.C.2 unit is in a location that would result in significant expense and environmental impact to construct. The R.C.8 unit appears to be even more problematic.

Mr. Lippincott met with the Miller family and Bruce Doak on December 16, 2010 to discuss the request, the preservation objectives in the area and the background on positions held on nondensity transfers in R.C.2. The best agricultural and resource use of the land is for forestry rather than for cropland or pasture. Locating one dwelling in the approximate area indicated on the site plan would have less impact on the resources than in the current R.C.2 area

on Parcel 52. As such, the request is supported subject to the following conditions: Eliminate the R.C.8 density unit on Parcel 52 leaving only the RC 2 unit for the construction of a dwelling; and require that forest management plans for both properties be conducted within one year of the zoning decision.

Considering all of the evidence and testimony presented at the hearing, I am persuaded to grant the Petition for special hearing. I agree with Petitioner's consultant, Mr. Doak, and with Mr. Lippincott of DEPRM that the manner in which to best utilize the density unit from Parcel 52 is to allow the transfer of density from Parcel 52 to Parcel 308, and to in turn approve the nondensity transfer of a 10.07 acre portion of Parcel 308 to Parcel 52 in order to place a proposed dwelling further back on the newly enlarged Parcel 52 in an already cleared area. This results in much less environmental impact or disturbance, preserving existing wooded areas, and also takes advantage of existing access to the private driveway from Valley Mill Road. These conditions are shown in the photographs of Parcel 52 that were marked and accepted into evidence as Petitioner's Exhibits 3A through 3I. A condition of the relief will be that Petitioner agree to eliminate and forfeit the R.C.8 density unit on Parcel 52 leaving only the R.C.2 density unit for construction of a dwelling thereon.

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 10<sup>th</sup> day of January, 2011 that Petitioner's request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve the transfer of a density unit to an adjoining parcel of land from Barbara L. Miller (Parcel 52) to

Barbara L. Miller (Parcel 308) and the nondensity transfer of 10.07 acres to an adjoining parcel of land from Barbara L. Miller (Parcel 308) to Barbara L. Miller (Parcel 52) be and are hereby

**GRANTED** subject to the following conditions:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner 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. Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).
4. Forest management plans for both properties shall be conducted within one year of the date of this Order.
5. Petitioner acknowledges and agrees to the forfeiture and elimination of the R.C.8 density unit on Parcel 52 leaving only the R.C.2 density unit for construction of a dwelling thereon.
6. Petitioner shall apply to the Development Review Committee for determination of further subdivision process and for a lot line adjustment.

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