

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
E side of Gunpowder Road, 1,230 feet		
N of the c/l Prettyboy Trails Road	*	OFFICE OF
6 th Election District		
3 rd Councilmanic District	*	ADMINISTRATIVE HEARINGS
(19601 Gunpowder Road)	*	FOR BALTIMORE COUNTY
Alan L. and Amy Yerkes Schmaljohn	*	
<i>Legal Owners</i>		CASE NO. 2011-0220-SPH

* * * * *

MEMORANDUM OPINION

This matter comes before the Office of Administrative Hearings for consideration of a Petition for Special Hearing filed by the legal owners of the subject property, Alan L. and Amy Yerkes Schmaljohn. The Petition was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), and seeks a special hearing to allow an accessory structure (barn) to be constructed on the subject property that does not have a principal structure. 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.

Bruce E. Doak of Gerhold, Cross & Etzel, Ltd., a property line surveyor assisting the Petitioners, attended the March 3, 2011, hearing in the above matter.

Extensive comments were received from the Department of Environmental Protection and Sustainability, dated February 15, 2011. That agency did not oppose the requested relief, but advised that development of the property must comply with the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code). The proposed barn must be at least 35 feet from the existing Forest Buffer Easement, and the property must comply with the Forest Conservation Law (Sections 33-6-101 through 33-6-122 of the Baltimore County Code). Prior to building permit approval, an

Agricultural Declaration of Intent must be filed to address and satisfy the requirements of the Forest Conservation Law. Finally, DEPS advised that a proposed building permit for a barn will need Groundwater Management review, for well and septic setbacks.

Under the B.C.Z.R., an accessory building is one “which is subordinate and customarily incidental to and on the same lot with a main building.” *B.C.Z.R. §101.1* In this case, there is no “main building” on the subject property (which comprises approximately 14 acres) and Petitioners seek special hearing relief to allow them to place a prefabricated barn onto the property without having a dwelling or other principal building on the same lot.

The subject property is located in northern Baltimore County and zoned RC 8. As noted in the B.C.Z.R., the RC 8 zone is designed primarily to preserve environmental and ecosystem features. *B.C.Z.R. §1A09.1* In the RC 8 zone, farms are permitted as a matter of right, and even though at this time the subject property is simply rural land, Mr. Doak indicated that Petitioners intend in the near future to fence the property and raise goats thereon, which would obviously constitute a farm operation as that term is used under the B.C.Z.R. Indeed, the B.C.Z.R. defines “farm” by making reference to commercial agriculture which the B.C.Z.R. defines, in pertinent part, to include raising or keeping “animals for income”, provided that the land also qualifies as a farm or agricultural use assessment pursuant to State law. *B.C.Z.R. §101.1* In the present case, the Maryland Department of Assessments and Taxation identifies the Petitioners’ property as qualifying for “agricultural use,” and thus the property would likewise appear to qualify as a farm or commercial agricultural operation under the B.C.Z.R.

Concerning the structure proposed for the site, Petitioners’ representative submitted photos and elevation drawings (marked and received into evidence as Exhibits 6 and 7, respectively) which show that the proposed barn is both modest and handsome, and will compliment the area.

In fact, in reviewing the request and commenting on same, Wally Lippincott of DEPS noted that the proposed barn is “appropriately sized and scaled for the proposed endeavors” and also noted that the “use and activities appear consistent with uses permitted in RC 8.”

After considering the testimony and exhibits, and in light of the absence of any citizen or neighborhood opposition, I am persuaded to grant the requested special hearing relief.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 18th day of March, 2011 that Petitioners’ request for Special Hearing relief pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to allow an accessory structure (barn) to be constructed on the subject property without a principal structure 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 the property must comply with the Law for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code). The proposed barn must be at least 35 feet from the existing Forest Buffer Easement.
3. Development of this property must comply with the Forest Conservation Law (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
4. Prior to permit approval, an Agricultural Declaration of Intent must be filed to address and satisfy the requirements of the Forest Conservation Law.
5. A proposed building permit for a barn will need Groundwater Management review, for well and septic setbacks.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/pz