

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND SPECIAL EXCEPTION</b>		
SW side of Dogwood Road to a private	*	OFFICE OF
Lane; 2,000 feet NW from Wrights Mill		
2 <sup>nd</sup> Election District	*	ADMINISTRATIVE HEARINGS
4 <sup>th</sup> Councilmanic District		
<b>(8729 Dogwood Road)</b>	*	FOR BALTIMORE COUNTY
Debbie Sharp and Joseph Campayno	*	<b>CASE NO. 2011-0279-SPHX</b>
<i>Legal Owners</i>		

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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings consideration of Petitions for Special Hearing and Special Exception filed by the legal property owners, Debbie Sharp and Joseph Campayno. The Special Hearing was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) as follows:

- To confirm an existing non-conforming unpaved access roadway of variable width pursuant to B.C.Z.R. Section 104.1; and
- To approve a modified parking plan for a riding stable without a durable and dustless surface and without stripped parking spaces in lieu of the required durable and dustless surface and stripped spaces pursuant to B.C.Z.R. Section 409.8.2; and
- For such other and further relief as the Administrative Law Judge may find necessary and appropriate.

The Special Exception request is as follows:

- To approve a riding stable; and
- For such other and further relief as the Administrative Law Judge may find necessary and appropriate.

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 Special Hearing and Special Exception requests were Petitioners Debbie Sharp and Joseph Campayno, and Jason Vettori, Esquire, attorney for the Petitioners. Also attending regarding the request was Thel Moore, Jr. of 8721 Dogwood Road and Cathy Wolfson, President of the Greater Patapsco Community Association.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments were received from the Office of Planning dated April 8, 2011. The Office of Planning recommends denial of the proposed Special Hearing to confirm an existing non-conforming unpaved access roadway of variable width. They also recommend denial of a modified parking plan for the riding stable without a durable and dustless surface and striped spaces. However, the Office has no opposition to Petitioners request for special exception itself to operate a riding stable, presuming their desires as to road surfaces are accepted. Comments were also received from the Bureau of Development Plans Review dated April 8, 2011. They likewise object to the surface structure of the road and driveways and have other concerns relative primarily to issues related to the issuance of building permits or requests for subdivision approval. The Agricultural Preservation Section of the Department of Environmental Protection and Sustainability supports the proposal as an appropriate agricultural use in an RC 2 zone, but likewise have a concern regarding the road and any future subdivision of the site.

Petitioner Debbie Sharp testified on behalf of her Petition. She related a brief history of the property, including its infamous time as the "stump dump," the subject of much litigation in years past. She noted that neither she nor her husband knew of that part of the site's history until after

they became its owners. Her position is that she believes little of concerns of several County agencies regarding the “dump” apply to their requested use, which she maintains will have little impact on the property. She described the general area of the site as primarily agricultural, with some houses, a cemetery, forests and nearby Patapsco State Park.

She described her background as it relates to horse and rider training and details of the proposed project. She is a 10 year experienced riding instructor and hopes to have this project pay for itself and thus be truly “non-profit.” She testified that she had met with the local Councilman as well as the Greater Patapsco Community Association and separately with its President, Cathy Wolfson, to insure that the project would be as “community friendly” as it could be. She explained that the requested use was not going to be a traditional “riding stable,” with horses rented for hire or for the boarding of customers’ horses. The only horses used would be those owned by the Petitioners themselves and outside activities in that regard would end at approximately 7:00 pm. The Petitioners propose an 80 feet x 20 feet “pole” barn and a “run-in shed” (a place for horses to come off pasture to get under cover). They further envision the use of numbered pastures -- a good administrative routine to rotate their use and protect grasslands and pastures from over use and over grazing. She noted that more often used areas near the barn and shed would be covered with sand on top in order to protect the pasture surface underneath.

The witness described the maintenance details of the project. This includes regular “deharrowing,” or breaking up of manure which will mitigate and significantly reduce odor and flies and added that manure from the stable stalls would be compacted in a concrete building “C” on the accompanying plat (and which is colloquially referred to by her as the “concrete bunker”). Turning her attention to the neighboring Moore property, she stated that they had spoken to Mr.

Moore and intended to take specific steps to shield the Moore property by setting back the fence between the two properties and putting in place additional trees as a buffer.<sup>1</sup>

As regards the various County agencies, the witness testified that they were receiving conflicting requests and instructions, but acknowledged that grading and building permits still to be obtained would require dealing with the various County required compliance issues. She noted, however, that the portion of the site amenable to development (shown in gray on the Plat to Accompany the Petition) would still need to be served by the already existing panhandle roadway; however, she stated that they have no plans for any further development.

Keith Wills, President of the Baltimore County Farm Bureau, which promotes agricultural use in Baltimore County and represents some 5,400 farm families, testified briefly in support of the Petitioners' plan for an equine facility.

James Herman, of JV Herman and Associates, testified on behalf of the Petitioners' project, and was accepted as an expert in land planning, landscape architecture, and interpretation of the Baltimore County Code as it relates to land use and the B.C.Z.R. He testified that he had prepared the plat to accompany the Petition for special hearing and variance in this matter and had reviewed the comments submitted by the various County agencies. He stated that, in his opinion, the comments submitted were, by and large, development and permit issues and not applicable to the purely zoning requests of the instant Petition. He noted that horses are permitted as of right in the RC 2 zone and that the special exception requested here is simply for a riding stable in that zone. He further confirmed that only the "gray area" of the plat to accompany is available for

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<sup>1</sup> At the request of this Administrative Law Judge, the Petitioners, subsequent to the hearing, have agreed to landscape the fence line between their property and the driveway of the Moore property. The length of this additional landscaping will be approximately 150 linear feet and will consist of no less than 15 fast growing arborvitae evergreen trees, placed 10 feet apart. This specific buffer will be made a condition of any Order issued in this matter.

development and the “white area” is the subject of the special exception request. He also confirmed that no plans exist for any further development of the “gray area.”

As regards the request for special hearing relief, the witness pointed out that the panhandle access to Dogwood Road is already in use and functions appropriately. He reiterated that there are no plans whatsoever for additional subdivision of the site. He believes that since the riding stable will use its own horses and not be boarding those of other owners, that the limited additional traffic of those taking lessons will not require any change in the road’s size or configuration. He therefore believes that the previous special hearing allowing for access to Dogwood Road should be reconfirmed. Finally, he believes that the present surface is practically and environmentally appropriate and that any increase in impervious surfacing on either the road or a parking area is unnecessary and adverse to the environment.

The witness then turned his attention to the special exception request. He opined that the impact of the requested use at this site is minimal and offered that a number of the “of right” activities permitted in the zone are worse and would have a more negative impact than the requested use would. He further offered that, in his opinion, the establishment of the requested use at this location would be no worse than at any alternate site within the RC 2 zone.

Mr. Herman proceeded to address the inquiries contained in subsection 502.1 of the B.C.Z.R. He stated that in his opinion the requested use would not be detrimental to the health, safety or general welfare of the locality involved as it would only call for minimal construction and would otherwise be primarily grassland; that the request would not tend to create congestion in roads, streets or alleys, given the obvious nature of the use and the limited number of people who would be availing themselves of the riding stable services; that it would not create a potential hazard from fire, panic or other danger as the site is a 36 acre open area; that it would not tend to

overcrowd land and cause undue concentration of population, again due to the nature of the requested use; would not interfere with adequate provisions for schools, parks, water, sewage, transportation or other public requirements or conveniences or improvements as the use would clearly not add population and the site utilizes private well and septic facilities; that the request would not interfere with adequate light and air, as there would be minimal construction, all within code, and no vistas would be adversely affected; that the request would not be inconsistent with the purpose of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations, as the requested use would be a clearly agricultural use within an agricultural area; would not be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations, especially based upon their requested special hearing relief granting crush and run surfacing and not imposing the additional impervious surface requirements on the site; and would not be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers, and floodplains in an RC 2, RC 4, RC 5 or RC 7 zone, as the Petitioners request will leave undisturbed all environmental amenities already in place, including swales for rainfall and runoff, forests, etc., resulting in better arrangements than most farms would normally have.

Cathy Wolfson, President of the Greater Patapsco Community Association, appeared and testified that she had personally met with the Petitioners regarding their intended plans and use of the site. She believes that the project will enhance the agricultural "feel" of the area in general; and specifically that the present crush and run "hard pack" road and proposed parking area is tough enough for Petitioners' intended use. She believes that the imposition of the road and parking requirements as recommended by the County in its comments to be excessive under the circumstances.

Thel Moore, an adjacent property owner to the site, believes that the Petitioners have done a “yeoman’s” job of cleaning up the site. His main concern is to maximize buffering by the placement of the fence and the use of trees to increase the buffer between the properties. Presuming steps are taken in that endeavor (which has occurred, as set out footnote 1), he looks forward to Petitioners’ project coming to fruition.

Finally, letters of support for the project were also submitted by neighbor Michael Bagby and family of 8729 Dogwood Road, and by Victoria Dever, who assisted the Petitioners in their efforts to clean up the property after its purchase by them.

This site has been the scene of a sad chapter in this community’s history. The “stump dump” and resulting damage are not a high point in the proper use of land and protection of the citizens of Baltimore County.

In the instant matter, however, the Petitioners, who apparently did not know of the site’s checkered history before their purchase, wish to put the property to an agriculturally related use that is both creative and appropriate. It requires minimal construction and has little impact on the general area and its inhabitants. Whatever impact will occur is, by testimony of all concerned, positive in nature. I note the concerns generated in the agency comments that have been submitted and are part of the file in this matter. However, I agree with witness Herman that the nature and applicability of these comments relate primarily to future permit and development issues and other related tasks. The clear, uncontroverted and sworn testimony of Debbie Sharp and witnesses testifying on behalf of the Petitioners is that they have no plans for further development of the property and only wish to take the superficial steps necessary to allow their requested use to become reality.

Therefore, I will address myself solely to the requested special hearing and special exception relief. As to the special hearing, the use requested by Petitioners will, I believe, have little affect on the property and its surrounding neighbors. I do not believe there will be other than a minor increase in the use of the panhandle access to Dogwood Road, nor will the requested use, based solely on horses owned by the Petitioners themselves, generate a significant change in the number of vehicles using the property. Moreover, and especially in light of the already checkered treatment of the site, I believe any increase to the impervious surfaces as a result of Petitioners' special exception use request, on the access road or parking area would not be environmentally appropriate and is unnecessary.

As to the special exception for the riding stable use itself, I agree with the Petitioners witnesses that, given the underlying agricultural basis of the site, the requested use is appropriate. The uncontroverted testimony of witness Herman clearly establishes that the Petition for special exception meets the requirements of case law and specifically of subsection 502.1 of the B.C.Z.R.

Based therefore upon the testimony and evidenced offered, I am persuaded to grant the requested Special Hearing and Special Exception relief.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's requests for special hearing and special exception should be granted.

THEREFORE, IT IS ORDERED this 16 day of May, 2011, by the Administrative Law Judge, that Petitioner's request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.")

- To confirm an existing non-conforming unpaved access roadway of variable width pursuant to B.C.Z.R. Section 104.1; and

- To approve a modified parking plan for a riding stable without a durable and dustless surface and without stripped parking spaces in lieu of the required durable and dustless surface and stripped spaces pursuant to B.C.Z.R. Section 409.8.2; and

be and are hereby **GRANTED**; and

IT IS FURTHER ORDERED that the Special Exception request to approve a riding stable be and is hereby **GRANTED**.

The relief granted is subject to the following conditions:

1. Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at its own risk until the 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. Petitioners shall landscape the fence line between their property and the driveway of the Moore property. The length of this additional landscaping will be approximately 150 linear feet and will consist of no less than 15 fast growing arborvitae evergreen trees, placed 10 feet apart.

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

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Signed  
LAWRENCE M. STAHL  
Managing Administrative Law Judge  
for Baltimore County

LMS:pz