



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

August 26, 2016

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

R. Brady Locher, Assistant County Attorney
Department of Permits, Approvals and Inspections
Real Estate Compliance Section
111 W. Chesapeake Avenue
Towson, Maryland 21204

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: In the Matter of: *William and Karen Chandler – Legal Owners*
Anitra and Jerome Schorr – Contract Purchasers
Case No.: 16-025-SPH

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Multiple Original Cover Letters

c: Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

William and Karen Chandler
Anitra and Jerome Schorr
Glenn and Kathleen Stevenson

IN THE MATTER OF:

William and Karen Chandler-Legal Owners
Anitra and Jerome Schorr-Contract Purchasers
2890 Anderson Road
7th Election District
3d Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: 16-025-SPH

* * * * *

OPINION

The case comes to the Board as a *de novo* appeal of the decision of Administrative Law Judge John Beverungen (“ALJ”) dated October 28, 2015 granting in part and denying in part a Petition for Special Hearing filed on behalf of William and Karen Chandler, Legal Owners of the subject property, and Anitra and Jerome Schorr, Contract Purchasers (together, “Petitioners”). The Petition requested the following relief: 1) a determination of the number of lots of record and rights of subdivision (density) for the subject tract, and 2) approval of a lot line adjustment and/or density configuration to facilitate the appropriate and permitted residential development of the subject tract.

The Board held an evidentiary hearing on this matter on April 26, 2016. Lawrence E. Schmidt, Esquire, appeared on behalf of the Petitioners’ and Carole S. Demilio, Esquire, Deputy People’s Counsel appeared on behalf of People’s Counsel for Baltimore County. At the hearing before the Board, Assistant County Attorney, R. Brady Locher, Esquire, for the first time, entered an appearance on behalf of Baltimore County.

BACKGROUND

The subject property at issue is more particularly described on the site plan submitted and marked into evidence as Petitioners' Exhibit 1. The property is a large tract of land, split zoned

RC 7 and RC 2 and located in the White Hall community of Baltimore County. In a Deed dated February 1977, the tract was described as containing approximately 110 acres (Pet. Ex. 2). Out of this approximately 110-acre tract, BGE acquired, by fee simple deed, two parcels totaling 19.7 acres in June and July 1968. The BGE property bisects Petitioners' tract into north and south properties. (Pet. Ex. 2).

Petitioners contend that the subject property now contains eight (8) density lots. They also note that a single family dwelling currently exists on site so that there remains seven (7) density rights on the property. People's Counsel disagrees, arguing that the property contains only six (6) density rights.

As to the second aspect of the Petition, the lot line adjustment, Petitioners contend that the this Board is permitted to create a lot on the 20.5-acre RC 2-zoned portion of the property where a proposed dwelling would be located and which contains two density rights.

People's Counsel filed a timely appeal of this decision and the Board held a hearing on this matter on April 26, 2016. Counsel submitted briefs in lieu of closing arguments. The Board held a Public Deliberation on June 1, 2016.

DISCUSSION

I. Standard of Review

The Petition for Special Hearing was filed pursuant to BCZR § 500.7. That provision permits an interested party to petition for a hearing to, *inter alia*, "determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations." According to the Court of Special Appeals, "[a] request for special hearing is, in legal effect, a request for a declaratory judgment." Antwerpen v. Baltimore County, 163 Md. App. 194, 209 (2005).

II. Density Units for the Subject Property

Petitioners and People's Counsel agree that two density units exist in the 6.1-acre RC 2 lot of record north of the BGE property.¹ As to the remaining property, they disagree as to whether the BGE strip resulted in two separate RC 7 parcels, or one large combined RC 7 acreage, and whether the acreage to the south of the BGE parcel should be considered one or two lots of record.

Petitioners argue that the BGE property, being a fee simple parcel that bisects the RC 7 land, created two separate RC 7 lots of record, north and south of the BGE property. People's Counsel maintains to the contrary that the BGE fee simple property is akin to a road, easement, or right of way, and that the portions to the north and south of the BGE land should not be considered separate parcels. Whether the RC 7 land is viewed as a single parcel, or two distinct lots, the parties agree that the RC 7 portion(s) of the subject property would yield two density rights per parcel. The Board finds that the BGE land, acquired by fee simple deed, created two distinct parcels for purposes of density calculations.

The remaining area of disagreement lies in the southern portion of the property, below the BGE land. People's Counsel maintains that the southern RC 2 property, shown on Petitioners' Ex. 1 in dark and light green, should be considered one lot of record totaling 27 acres, and thus entitled to two density units. According to People's Counsel, a prior owner merged a prior 5-acre lot and a 22-acre area into a single RC 2 zoned area of 27 acres. In support of this position, People's Counsel points to a 2002 Deed and argues that this Deed described the entire site in a single description, saving and excepting only the BGE land. People's Counsel further maintains that any prior lot line between the two parcels was thereby extinguished and that the resulting single 27-

¹ There are apparent discrepancies between the parties, the site plan, as to the acreage of certain of the parcels in this property.

acre parcel would support two density units. People's Counsel did not offer any expert testimony in support of their argument.

Petitioners argue to the contrary. They assert that the southern property remains two separate RC 2 lots of record, each of which yields two density rights. Petitioners offered the testimony of Land Surveyor Kenneth Wells, who was accepted as an expert in land surveying, development and zoning, to establish that there are two rather than one lot of record. According to Mr. Wells, the focus is on November 1979, when RC 2 zoning was initiated.² He testified that at that time, the approximate 6-acre parcel shown in light green on the site plan was considered a separate piece of land. Mr. Wells stated that this lot was separately identified by a metes and bounds description by a deed recorded in the Baltimore County land records in February 1977. His testimony is uncontroverted by any other testimony.

Based on his evaluation of the property and its history, Mr. Wells concluded that the southern portion of the property yielded two separate RC 2 "lots of record" as defined in BCZR §101.1, each of which provided two density rights for a total of four density units. Mr. Wells further opined that in total, the subject property has eight density units. We agree with Mr. Wells' opinion that the subject property contains eight density rights.

III. Lot Line Adjustment

Petitioners also have requested that the Board approve a lot line adjustment and/or density reconfiguration to facilitate permitted residential development of the subject property. Petitioners emphasize that they are not creating a subdivision, not creating an additional lot, and not increasing the density. Instead, they state they seek reconfiguration of the existing lots so that the contract

² The BCZR defines a lot of record" as a "parcel of land with boundaries as recorded in the land records of Baltimore County" on the same date as of the effective zoning regulation – here, 1979. See BCZR §101.1.

purchasers can build one house on the portion of the property shown in dark green on the site plan. Mr. Wells testified that such an adjustment was appropriate, and People's Counsel did not offer any testimony to the contrary.

Section 32-4-106 of the Baltimore County Code identifies proposed development plans that are exempt from the general development review process. Subdivision (a)(viii) provides an exemption for:

Lot line adjustments in residential zones for lots that are not part of an approved Development Plan under this title or an approved Development Plan under Article 1B of the Baltimore County Zoning Regulations. For purposes of this subsection, "lot line adjustment" means one or more alterations of a divisional property line or lines between two or more lots in common ownership or by agreement of the owners, provided that the alteration does not result in an increase or decrease in the number of lots and there is no increase in total residential density available to the lots considered as a whole. . . .

BCC § 32-4-106(a)(viii). Petitioner has acknowledged that they "will need to file an application to the County's Development Review Committee ("DRC") to obtain [this] exemption." (Petitioners' Memorandum at 17.) The Board agrees and declines to issue a declaration as to the propriety of whether or not the requested zoning relief should be granted.

ORDER

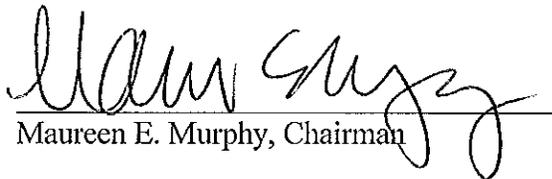
THEREFORE, IT IS THIS 26th day of August, 2016 by the Board of Appeals of Baltimore County

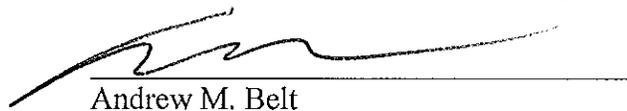
ORDERED that the Petition for Special Hearing pursuant to B.C.Z.R. §500.7: (1) to determine the number of lots of record and rights of subdivision (density) for the subject tract, split zoned RC2 and RC7; and (2) to approve a lot line adjustment and/or density reconfiguration to facilitate the appropriate and permitted residential development of the subject tract, be and is hereby GRANTED in part and DENIED in part, as follows:

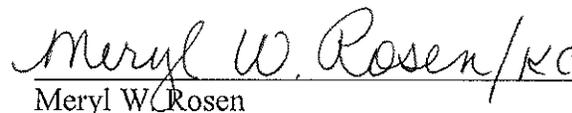
- A. The subject property owned by Petitioners contains eight (8) density rights, although a single family dwelling exists on site. As such, there remain seven (7) density rights on the overall tract, as set forth herein.
- B. The proposed single family building lot in the southwest corner of the property, outlined on the site plan in blue is permitted under the RC 2 density and use regulations, although that lot must be created through the Baltimore County subdivision and development process.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Chairman


Andrew M. Belt


Meryl W. Rosen