

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(6136 Deer Park Road)		
2 nd Election District	*	OFFICE OF
4 th Council District		
El Paso Colby, Inc.	*	ADMINISTRATIVE HEARINGS
<i>Legal Owner</i>		
Petitioner	*	FOR BALTIMORE COUNTY
	*	Case No. 2018-0155-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of El Paso Colby, Inc., legal owner (“Petitioner”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to confirm/establish rights of subdivision (density) for existing Parcel 258 and Parcel 350, which are under common ownership and to confirm/ratify previous property conveyances from Parcel 258 and Parcel 350.

Surveyor Ken Wells appeared in support of the petition. Lawrence E. Schmidt, Esq. represented Petitioner. Numerous citizens attended the hearing to obtain additional information regarding the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the reviewing county agencies.

A site plan was marked and admitted as Petitioner’s Exhibit 1. At the conclusion of the Petitioner’s case, the community asked for a continuance so that another hearing day could be scheduled at which they could express their concerns. That request was granted, although after examining the exhibits I believe the case can be resolved without further testimony since the dispositive issues are questions of law.

This is a special hearing case. The Maryland court of special appeals has held a “request for special hearing is, in legal effect, a request for a declaratory judgment.” *Antwerpen v. Balto. Co.*, 163 Md. App. 194, 209 (2005). In other words, Petitioner is not seeking approval for any specific or proposed project or subdivision. Instead, it filed the petition to determine what rights it has with respect to the parcels at issue, as permitted under B.C.Z.R. §500.7. As counsel noted at the outset of the hearing, both the RC 4 zoning regulations and the growth tiers adopted by Baltimore County pursuant to the Sustainable Growth and Agricultural Preservation Act of 2012 are potentially applicable in determining the subdivision rights associated with the subject property.

PARCEL 350

E. & J. Silcott acquired in 1979 a tract of land zoned RC 4. The tract at that time totaled approximately 44.67 acres. In 2000, the Silcotts subdivided the tract into two lots, as shown on the minor subdivision plan filed at S.M. 1-212. Pet. Ex. 3. Lot 2 shown on that plan, now identified as Parcel 350, contains 39.47 acres and Lot 1 contains 5.19 acres. Lot 1 is improved with a single-family dwelling known as 1710 Oakland Road. Lot 2 is improved with a single-family dwelling known as 6136 Deer Park Road and another dwelling identified on the plan as a “tenant house.” The minor subdivision plan identified a conservancy area of 34.15 acres, or 70% of the total acreage, and it does not appear as if any dwellings or structures are located within the conservancy area.

Parcel 350 is located within a Tier IV growth area, meaning that only a minor subdivision (with on-site sewage disposal systems) may be constructed. Though it does not appear to be specifically defined, the Baltimore County Code contains several references to “minor subdivisions” (*E.g.*, BCC §§32-6-108(b)(2); 32-4-203(a)(2); 32-6-103(b)(2)(v)) and the long-

standing and uniform agency practice and interpretation of that term means the creation of three or fewer lots for single-family dwellings.

As noted above Parcel 350 has been subdivided into two lots, pursuant to the “Minor Subdivision Plan” approved in 2000. Pet. Ex. 3. While only two lots were created, three dwellings exist on the tract; i.e., Lot 2 contains a dwelling and a “tenant house.” In the RC 4 zone, only one dwelling is permitted per lot. B.C.Z.R. §1A03.4.B.5. However, a “tenant house” is permitted in the RC 4 zone provided the Land Preservation Advisory Board certifies that [] [a]ny such proposed dwelling is required for the operation of the farm for the use of bona fide tenant farmers.” *Id.* The Zoning Commissioner’s Policy Manual contains similar restrictions on tenant houses in the RC 4 zone, including a requirement that a “tenant affidavit” and deed be submitted in support of the request. Z.C.P.M. pp. 1A-6 & 1A-25.

The file in this case does not contain any documentation concerning the legitimacy of the “tenant house” and none of the exhibits submitted by the Petitioner addressed the issue. At the hearing, community members adamantly stated there is no farming activity on the property. In these circumstances I believe the dwelling identified on Lot 2 of the minor subdivision plan as a “tenant house” does not satisfy the requirements for that use or designation. As such, to comply with Baltimore County requirements the Petitioner would be required to amend the minor subdivision plan and create a third lot thereon that would encompass the “tenant house.” As noted above, only minor subdivisions are permitted in Growth Tier IV, and thus I believe Petitioner has no further rights of subdivision with respect to Parcel 350.

PARCEL 258

In or about 1982, Mr. Silcott acquired a 42 acre parcel situated to the west of parcel 350. In 1993 an 11.46 acre parcel was conveyed from the tract, which is now owned by William and

Amy Craig. That property (identified as Parcel 559 on the site plan admitted herein as Ex. 1) is improved with a 2,896 sq. ft. single-family dwelling constructed in 1993. The remainder of the original 42 acre tract (comprising approximately 30.595 acres) is identified on Petitioner's site plan as Parcel 258. The Department of Planning visited the site on January 2, 2018 and stated in its comment "[t]here are no dwellings on this parcel currently."

Parcel 258 is also located within Growth Tier IV. As noted above in connection with Parcel 350, only a minor subdivision (utilizing private well and septic systems) may be constructed on a Growth Tier IV parcel. The original 42 acre tract was not lawfully subdivided; i.e., it is undisputed the prior owner conveyed the 11.46 acre parcel in 1993 without complying with County subdivision and zoning regulations.

In light of the above, Petitioner must prepare and submit to Baltimore County a minor subdivision plan encompassing the entire 42 acre tract. Such a plan would allow Petitioner to create three lots total, although one lot on the plan must be allocated to the 11.46 acre parcel conveyed to the Craigs; now known as 1724 Oakland Avenue. As such, assuming Petitioner complies with the requirements set forth in the County's subdivision and zoning regulations, two additional lots may be created on Parcel 258 as shown on the site plan.

THEREFORE, IT IS ORDERED this 9th day of **February, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing be and is hereby GRANTED, as follows:

1. No additional lots may be created on Parcel 350 as shown on the site plan admitted herein as Exhibit 1; and
2. Provided Petitioner or subsequent owner submits and has approved by Baltimore County a minor subdivision plan--in compliance with all subdivision and zoning regulations--two (2) additional lots may be created on Parcel 258 as shown on the site plan admitted herein

as Exhibit 1.

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

Signed _____
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB: sln